Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for $2,100 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding via an interim decision issued October 6, 2020. The presiding arbitrator determined that the documentary evidence submitted by the tenants raised questions that could only be answered in a participatory hearing.

Preliminary Issue – Identity of Landlord

At the outset of the hearing, I noted that the landlord ("**MB**") named by the tenants on this application was different from the landlord listed on the tenancy agreement (a numbered company). Tenant MH testified that MB was listed in the tenancy agreement as the sole contact for the corporate landlord and that she is the owner of the corporate landlord.

The numbered company is the correct landlord. MB merely an agent of the numbered company. As such, the numbered company is the entity that ought to have been named as the respondent to this application. I find that an amendment to the application is necessary to correct this.

Rule of Procedure 4.2 states:

> **4.2 Amending an application at the hearing**
>
> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
>
> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that an amendment substituting the numbered company's name for that of MB could reasonably been anticipated by both MB and the numbered company. As such, I amend the application order that the respondent to this application is the numbered company (which I will refer to as "the landlord" for the rest of this decision), and not MB.

Preliminary Issue – Landlord's attendance

No representative of the landlord attended this hearing, although I left the teleconference hearing connection open until 9:50 am in order to allow one to call into this teleconference hearing scheduled for 9:30 am. The tenants attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

MH testified that he served that the landlord with a copy of the interim decision, the notice of reconvened hearing, and the supporting evidence package via registered mail on October 7, 2020. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision.

MH testified that he sent the registered mail to the landlord's forwarding address as provided on the move-out condition inspection report (the "**Move-Out Report**"). This address is the same as the rental unit. He testified that the registered mailing was returned to him by Canada post, with the mailing address and MB's name crossed out. The tenancy agreement does not include an address for service (contrary to the requirement of section 13(2)(e) of the Act). MH testified that the landlord did not provide any other address for service other than the one on the move-out inspection report.

As the tenants had no address for service other than the rental unit, as the landlord breached the Act by failing to provide them an address for service in the tenancy agreement, and as MB indicated on the Move-Out Report that the landlord could be served at the rental unit, I find (per section 71(2) of the Act) that the landlord has been sufficiently served with the required documents for the purposes of the Act.

Issues to be Decided

Are the tenants entitled to:

1) a monetary order of $2,100; and
2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenants, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants claims and my findings are set out below.

The parties entered into a written tenancy agreement starting February 1, 2020. Monthly rent was $2,100. The tenants paid the landlord a security deposit of $1,050. The landlord still retains this deposit. The tenants vacated the rental unit on August 29, 2020.

On August 28, 2020, the parties conducted a move-out condition inspection, following which MB provided the tenants with the Move-Out Report. The tenants wrote their forwarding address on the Move-Out Report and gave it to MB.

On August 29, 2020, the tenants personally served MB with a letter addressed to the landlord and MB which stated

> Notice concerning the forwarding address
>
> The landlord is hereby notified of the means to return the damage deposit of 1050 CAD to the tenants.
>
> The damage should be sent to the following:
>
> > [Rental unit address]
>
> The tenants here by confirmed they have acquired mail forwarding service is from Canada Post. Therefore, the damage deposit must be mailed officially using regular postal services.
>
> The landlord may contact the tenants at this number should they have any difficulties with returning the damage deposit: [redacted]

The tenants entered a screenshot of the Canada Post website showing that they purchased mail forwarding for MH from the rental unit to the forwarding address on August 11, 2020 for four months and for tenant IC on July 28, 2020 for twelve months.

MH testified that the tenants provided the rental unit address as their forwarding address to provide the landlord with an additional option to return the security deposit.

MH testified that MB contacted them shortly after the tenancy ended alleging that the tenants caused damage to the rental unit and sought to make deductions from the deposit. He testified that the tenants disagreed, and that the conversation became heated. He stated that the conversation ended with MB making aggressive remarks towards the tenants and blocking their phone numbers.

To date, MH testified that the landlord has not returned the security deposit or filed an application to retain the security deposit.

Analysis

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the tenants, I find that the tenancy ended on August 29, 2020 and that the tenants provided their forwarding address in writing to the landlord on August 28, 2020, on the Move-Out Report.

I do not find that the letter of August 29, 2020 has any effect on the tenants' provision of the forwarding address in the Move-Out Report. The tenants were clear in the letter that, if the security deposit was mailed to the rental unit, it would automatically be forwarded to them by Canada Post. The tenants did not deprive the landlord of its right to serve them in a different manner (say, in person or by posting on the door) as the landlord could have done this using the address provided on the Move-Out Report.

Additionally, the tenants provided a contact number should the landlord be confused with the mail forwarding arrangement.

I find that the landlord has not returned the security deposit to the tenants within 15 days of receiving their forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough for the landlord to allege the tenants caused damage to the rental unit. It must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlord did not do this. Accordingly, I find that it has failed to comply with their obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that it pay the tenants double the amount of the security deposit ($2,100).

Pursuant to section 72(1) of the Act, as the tenants have been successful in their application, they are entitled to have their filing fee of $100.00 repaid by the landlord.

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenants $2,200, representing the return of two time the amount of the security deposit and the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2020

Residential Tenancy Branch