



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL
 MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on February 7, 2023. The Landlord applied for a monetary order for unpaid rent, for a monetary order for damages and losses to the rental unit, permission to keep the security deposit and to recover their filing fee.

The Tenants’ Application for Dispute Resolution was made on June 10, 2023. The Tenants applied for the return of their security deposit and the return of their filing fee.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary matter – Missing Details of Monetary Claim

At the outset of these proceedings, it was noted that the Landlord had not included a monetary worksheet with their application for Dispute Resolution. The Rules of Procedure section 2.5 states the following:

Documents that must be submitted with an Application for Dispute Resolution

“To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.”

The Landlord testified that they had believed that they included a monetary worksheet. The Landlord was provided with additional time to locate this document in their evidence package. The landlord was unable to locate the document in their evidence package.

I have reviewed the Landlord’s application and supporting documentary evidence, and I find that the Landlord did not submit a detailed calculation of their monetary claim as required. In so, the Landlord failed to provide the Tenants with the detailed information they required to understand the claims being made against them in the Landlord’s application.

I find that it would be procedurally unfair to the Tenants to continue in this proceeding when they have not been provided with a detailed calculation of the monetary claim being made against them.

Accordingly, I find it appropriate to dismiss the Landlord’s claim with leave to reapply.

I dismiss the Landlord’s claim to recover the filing fee for this application without leave to reapply.

Issues to be Decided

- Are the Tenants entitled to the return of his security deposit, pursuant to section 38 of the *Act*?
- Are the Tenants entitled to the return of his filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy recorded that the tenancy began on December 21, 2021, as a one-year fixed term tenancy. Rent in the amount of \$1,700.00 was to be paid by the first day of each month and Landlord is currently holding a \$1,700.00 security deposit for this tenancy. Both parties submitted that the Tenants moved out of the rental unit on February 28, 2023.

The Tenants testified that they provided their forwarding address to the Landlord by email on April 26, 2023. The Tenant testified that they did not have an agreement with the Landlord for the service of documents by email. The Tenant provided a copy of the email into documentary evidence.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the submission of these parties that they had entered into a tenancy agreement starting for a monthly rent of \$1,700.00 and that the Landlord collected a \$1,700.00 security deposit for this tenancy. Section 19 of the *Act* sets the limit on a security deposit for a tenancy, stating the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Pursuant to section 19 of the *Act*, the maximum security deposit the Landlord may have accepted for this tenancy was \$850.00. However, in this case, the Landlord collected a \$1,700.00 security deposit. I find that the Landlord breached section 19 of the *Act* when they collected a \$1,700.00 security deposit for this tenancy. The Landlord was cautioned during these proceedings regarding their breach of the *Act*.

Section 38 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.

I accept the Tenants' submissions that they served their forwarding address to the Landlord with their forwarding address by email sent on April 26, 2023. The Residential Tenancy Branch Policy Guide #12 Service Provisions provides guidance on email service, stating the following:

“Email service

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.”

“If service by email is used, the person serving the document will need to provide proof that the document sent by email was sent to the email address provided by the other party. Satisfactory proof may include a print out or screen shot of:

- RTB 51 – Address for Service or other document that sets out the party's email address for service;
- the sent item, including the email address the item was sent to;
- a confirmation of delivery receipt;
- a response to the email by the party served;
- a read receipt confirming the email was opened, or
- other documentation to confirm the party has been served.”

I have reviewed the documentary evidence provided by the Tenant, noting that they submitted a copy of one email dated November 22, 2021. I have reviewed this email and noted that there was one attachment indicated on this email labelled "Evidence TWN.pdf."

After reviewing the submissions provided by the Tenants, I find that the Tenants did not have an agreement with the Landlord for email service.

Consequently, I find that the Tenant has not served the Landlord with their forwarding address and that their application for the recovery of their security deposit is premature. Therefore, I dismiss the Tenant's application to recover their security deposit with leave to reapply.

Section 72 of the *Act* gives me the authority to order the repayment of a filing fee for an application for dispute resolution. As the Tenants were not successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenants' application for the recovery of their security deposit with leave to reapply.

I dismiss the Tenants' claim to recover the filing fee for this application without leave to reapply.

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: October 26, 2023

Residential Tenancy Branch