



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGSEN REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MND, MNSD, FF (Landlords' Application)
 MNSD, FF (Tenant's Application)

Introduction

This hearing was convened by way of a conference call hearing in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and the Tenant. The Landlords applied for an Order of Possession, a Monetary Order for damage to the rental unit, and to keep the Tenant's security deposit. The Tenant applied for the return of the security deposit. Both parties also applied to recover the filing fee from each other.

An agent for the Landlords and the Tenant appeared for the hearing. The Tenant also wanted to call a witness to the hearing but this was not necessary as the parties resolved their dispute by mutual agreement as detailed below.

Preliminary Issues

The parties confirmed receipt of each other's Application. The Tenant confirmed receipt of the Landlords' documentary and photographic evidence. However, while the Landlords' agent acknowledged that he had received late evidence from the Tenant, the Landlords' agent submitted that he did not have sufficient time to respond to it as it was served to him two days prior to this hearing. I noted that this evidence had also been provided to the Residential Tenancy Branch late. The Tenant failed to explain why she had submitted this evidence late. Therefore, as the Tenant had served this evidence late in accordance with the time limits set out by the Residential Tenancy Branch Rules of Procedure, I declined to consider this evidence during the hearing.

At the start of the hearing, the parties confirmed that the Tenant had vacated the rental unit and the tenancy had ended. Therefore, I dismissed the Landlords' Application for an Order of Possession. The Landlord's agent explained that the monetary claim amount had since increased as the original amount he had applied for was based on estimates. The Landlord's agent was informed that he has to put the Tenant on notice of an increased claim by amending the Landlords' Application pursuant to the process outlined in the Rules of Procedure. I offered the Landlord's agent an opportunity to withdraw these portions of the monetary claim and that I would provide leave to re-apply for the increased amounts. However, the Landlord's agent explained that he wanted to proceed with the hearing based on the amount disclosed in the Application.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. After the parties had finished providing their evidence, I offered the parties an opportunity to settle the matter by way of mutual agreement. The parties took some time to consider this voluntary option, turned their minds to compromise, and decided that resolution was best by way of mutual settlement.

Settlement Agreement

Pursuant to Section 63 of the *Residential Tenancy Act* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Both parties **agreed** to settle their respective Applications **in full and final satisfaction** as follows:

- The parties agreed that the Landlords will return to the Tenant \$237.25 to settle her Application in full.
- The parties agreed that the Landlords will keep the remaining amount of the security deposit, \$762.75, in full and final satisfaction of their Application and their potential monetary claim for the higher amount.
- The parties agreed that this amount will be paid back to the Tenant forthwith. The Tenant is issued with a Monetary Order for the amount of \$237.25 which is a precautionary measure to be used by the Tenant if the Landlords fail to make payment in accordance with this agreement.
- If the Landlords fail to make payment the Tenant may serve and enforce the order through the Small Claims Court as an order of that court.
- The Landlords are cautioned to ensure that documentation is retained in relation to the payment made.

This agreement is fully binding on the parties and is in full and final satisfaction of **both** Applications. The parties confirmed voluntary resolution in this manner both during and at the end of the hearing. Both files are now closed.

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 16, 2015

Residential Tenancy Branch

