



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This matter was set for a conference call hearing at 1:00 p.m. on this date. The tenant, J.B. attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend.

The landlord failed to attend the hearing by way of conference call. I waited until 11 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the application dismissed without leave to reapply. I make no findings on the merits of the matter.

The tenant stated at the outset that she is seeking the return of \$666.00 which is 2/3 of the security deposit that was paid to the landlord which has not been returned.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed evidence that she provided notice to vacate the rental unit on April 27, 2016 for April 30, 2016. The tenancy ended on April 30, 2016 when she vacated the rental unit and left the keys to the rental unit inside on the counter as the landlord was out of the country.

The tenant stated that she had provided her forwarding address in writing in a letter dated May 18, 2016 to the landlord requesting the return of the \$666.00 security deposit. The tenant clarified that the security deposit was \$1,000.00 and that the landlord had accepted receiving it in 3 installment payments of \$333.00. The tenant stated that the 1st installment payment of \$333.00 was made in an etransfer on December 24, 2015. The 2nd installment payment of \$333.00 was made by etransfer on January 21, 2016. The tenant stated that this was confirmed by the landlord's submitted document #1.

The tenant also stated that there was no signed tenancy agreement and that the landlord failed to conduct a condition inspection report or provide her with a copy of it.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, the landlord's monetary claim for a monetary order for unpaid rent and to retain all or part of the security deposit was dismissed without leave to reapply. The tenant stated that as of the date of this hearing that the landlord has not returned the security deposit. As such, the landlord has failed to comply with section 38 by returning the security deposit or filing for dispute for authorization to retain the security deposit.

The tenant has provided undisputed affirmed evidence that \$666.00 of the set \$1,000.00 security deposit was paid as confirmed by the landlord's submitted documentary evidence.

The tenant has provided undisputed affirmed evidence that her forwarding address in writing was given to the landlord in a letter dated May 18, 2016.

I accept the undisputed affirmed evidence of the tenant and find that the landlord has failed to comply with section 38 of the Act. I also find pursuant to Residential Tenancy Branch Policy Guideline #17 that the landlord has extinguished his right against making a claim against the security deposit. On this basis, I find that the tenant is entitled to return of the original security deposit of \$666.00 paid to the landlord.

However, the landlord having failed to comply with the Act is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. As such, I find that the landlord is liable to \$666.00 as that was the amount paid by the tenant for the security deposit.

The tenant has established a monetary claim for \$1,332.00.

Conclusion

The tenant is granted a monetary order for \$1,322.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 22, 2016

Residential Tenancy Branch