



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 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 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 that as of the date of this hearing the landlord has failed to return his \$425.00 security deposit as he is no longer residing at the rental premises due to complying with the landlord's 2 Month

Notice to End Tenancy Issued for Landlord's Use on July 2, 2016 and has provided a forwarding address in writing to the landlord at the end of the tenancy.

At the end of the hearing the tenant stated that he has moved since the application was filed and has now provided a new mailing address which will be updated in the Residential Tenancy Branch File.

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. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of the tenant and find that the landlord has failed to return the \$425.00 security deposit within the allowed 15 day period following the end of the tenancy. The tenant provided undisputed evidence that the tenancy ended on July 2, 2016 and that the tenant's forwarding address in writing was provided to the landlord at the end of the tenancy. As such, the tenant is entitled to recovery of the original \$425.00 security deposit.

As well, pursuant to section 38 (6) of the Act, the landlord having failed to comply with section 38 (1) of the Act by returning the security deposit or making an application for dispute (landlord's application for dispute dismissed without leave to reapply) the landlord is liable to an amount equal to the \$425.00 security deposit. I find that the landlord has extinguished his right to make a claim against the security deposit.

The tenant is granted a monetary order for \$850.00.

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: January 04, 2017

Residential Tenancy Branch