



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 51 minutes in order to allow both parties to negotiate a settlement of this claim.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant said that he received the landlord's written evidence but he did not receive the landlord's photographs, which the landlord said was emailed to the tenant on August 12, 2016. The landlord said that she received the tenant's written evidence but only received 6 of the 20 photographs submitted by the tenant, which the tenant said was sent by registered mail along with all of his other evidence. As this matter settled, I do not find it necessary to make any findings with respect to service of these documents.

Analysis

Pursuant to section 63 of the *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. During the hearing, the parties discussed the issues between them, turned their minds to

compromise and achieved a resolution of their dispute and arising out of this tenancy, except for the landlord's application to recover the filing fee.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time and arising out of this tenancy, except for the landlord's application to recover the filing fee:

1. Both parties agreed that the landlord will retain \$50.00 from the tenant's security deposit;
2. Both parties agreed that the landlord will return the remaining \$550.00 from the tenant's security deposit to the tenant by February 10, 2017, provided that the following condition is met:
 - a. the tenant will email the landlord with his bank account number and email contact information for e-transfer, by February 7, 2017, so that the landlord can pay the tenant by direct deposit to his bank account or by e-transfer;
3. The landlord agreed that this settlement agreement constitutes a final and binding resolution of her application at this hearing and any issues arising out of this tenancy, except for the \$100.00 filing fee for this current application;
4. Both parties agreed that they will not initiate any future claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute and arising out of this tenancy, except for the filing fee.

I reconfirmed with the landlord, a number of times during this hearing, that she was making this agreement voluntarily, without any outside pressure, and of her own free will. I notified the landlord that I could not enforce an agreement that she felt pressured or forced to reach. The landlord affirmed a number of times during the hearing that she wanted to settle this matter and she was making the agreement freely and voluntarily.

Both parties confirmed that they wanted me to make a decision regarding the landlord's \$100.00 application filing fee because they were unable to settle the matter. The filing fee is a discretionary award issued by an Arbitrator usually after a party is fully successful on the merits of the application, once a full hearing has been conducted and

the Arbitrator makes a decision about the merits. As I was not required to make a decision on the merits of the landlord's application and the matter was settled voluntarily between the parties, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I order the landlord to retain \$50.00 from the tenant's security deposit in order to enforce this settlement agreement.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the tenant's favour in the amount of \$550.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord does not abide by condition #2 of the above agreement. The landlord must be served with a copy of this Order as soon as possible after the landlord does not abide by condition #2 of the above agreement. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to recover the \$100.00 filing fee is dismissed 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: February 06, 2017

Residential Tenancy Branch