



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on November 14, 2017. The Landlord applied for a Monetary Order for: damage to the rental unit; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and to recover the filing fee from the Tenant.

Preliminary Issues

The Tenant appeared for the 1:30 p.m. hearing and provided affirmed testimony. However, there was no appearance for the Landlord despite the line being left open for ten minutes to allow the Landlord an opportunity to appear. The Tenant confirmed receipt of the Landlord's Application which had been served to him.

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states 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. As the Landlord did not appear by 1:40 p.m., and the Tenant appeared and was ready to proceed, I dismissed the Landlord's Application **without** leave to reapply.

Issue(s) to be Decided

What is to now happen with the Tenant's security deposit?

Background and Evidence

The Tenant testified that this tenancy started on July 1, 2013. During the tenancy the Tenant paid the Landlord a \$595.00 security deposit which the Landlord continues to hold in trust. Rent of \$1,150.00 was payable on the first day of each month.

The Tenant testified that the tenancy ended by mutual agreement on November 1, 2016. The Tenant testified that he signed a mutual agreement on the form provided by the Residential Tenancy Branch (RTB-8) on which he also documented his forwarding address.

The Tenant confirmed that he had not provided any documentary evidence prior to this hearing but that he did receive the two letters the Landlord had provided for the file before me. These letters were dated November 6, 2016 and related to a request by the Landlord for the Tenant to pay for alleged damage to a microwave and a move-out fee charged by the strata company to the Landlord.

The Tenant testified that he had no dispute with the Landlord's claim for the move-out fee and had given the Landlord consent to deduct \$85.00 from his security deposit. However, the Tenant denied the alleged damage to the microwave and now claims the remaining \$510.00 from his security deposit from the Landlord.

Analysis

The Landlord's letter to the Tenant dated November 6, 2016 documents the Tenant's forwarding address and this was the same address the Landlord used to file the Application. Therefore, I am satisfied that the Tenant provided the Landlord with his forwarding address on the end date of the tenancy, namely November 1, 2016.

Accordingly, I find the Landlord correctly filed the Application on November 14, 2016 to keep the Tenant's security deposit within the 15 day time limit provided by Section 38(1) of the Act. The Tenant consented to the Landlord deducting \$85.00 from his security deposit for a move-out fee payable by the Tenant. However, as the Landlord failed to appear for this hearing and prove his evidence regarding damage to the microwave, the Landlord no longer has a claim to the Tenant's remaining security deposit of \$510.00.

Section C of Policy Guideline 17 on Security Deposit and Set Off states in part:

"The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on: a landlord's application to retain all or part of the security deposit; or a tenant's application for the return of the deposit, unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return."

[Reproduced as written]

There is no evidence before me that the Tenant extinguished his right to the return of the remainder of his security deposit. Therefore, I must order the Landlord to return to the Tenant \$510.00 forthwith.

The Tenant is issued with a Monetary Order for this amount pursuant to Section 67 of the Act. This order must be served on the Landlord and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court if payment is not made. Copies of this order are attached to the Tenant's copy of this Decision. The Landlord maybe held liable for any enforcement costs incurred by the Tenant.

Conclusion

The Landlord's Application is dismissed without leave to re-apply because he failed to attend the hearing. The Tenant is granted a Monetary Order for the return balance of his security deposit of \$510.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 11, 2017

Residential Tenancy Branch