



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of double the amount of the security and pet damage deposits ("deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant tenant did not attend this hearing, which lasted approximately 21 minutes. The respondent landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

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.

As per the above, I am required to deal with the tenant's deposits because the tenant has applied to obtain a return of them, even though the tenant has not appeared at this hearing.

Issue to be Decided

Is the landlord entitled to retain both deposits?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on March 1, 2016 and ended on July 15, 2016. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 were paid by the tenant and the landlord continues to retain both deposits. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord on February 26, 2017 by way of a letter. The landlord had written permission to keep \$700.00 from both deposits. The landlord did not file an application for dispute resolution to retain the deposits.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously

ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the landlord at this hearing. The tenancy ended on July 15, 2016. The tenant provided a written forwarding address to the landlord on February 26, 2017. The tenant gave the landlord written permission to retain \$700.00 from both deposits. The landlord did not return the deposits to the tenant or file an application to retain them. Although the landlord's right to claim against the deposits for damages was extinguished by sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy, the landlord stated that he had a claim for rental loss against the tenant which exceeded both deposits because it was for two months, totalling \$2,800.00.

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposits. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the landlord is entitled to retain both deposits, totalling \$1,400.00. The tenant did not appear at this hearing to support his application to obtain a return of double the deposits and his application was dismissed so the landlord is entitled to retain both deposits.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I order the landlord to retain both the tenant's security and pet damage deposits, totalling \$1,400.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 23, 2017

Residential Tenancy Branch