



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND 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 and damages 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 the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The applicant landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord's application is dismissed in its entirety without leave to reapply as the landlord failed to attend the hearing and present evidence in support of the application.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Background and Evidence

The tenancy began on April 1, 2016 and ended on April 30, 2017. The tenant paid a security deposit of \$997.50 at the start of the tenancy which the landlord continues to hold.

The landlord filed an application on May 3, 2017 for monetary compensation for unpaid rent and damages and authorization to retain all or a portion of the tenant's security deposit.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although the landlord made an application to retain the deposit, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. As such, I find the landlord's application to be frivolous and an abuse of the dispute resolution process. As per Residential Tenancy Policy Guideline #17, the doubling provisions of section 38 therefore apply.

I order the landlord to return the security deposit and award the tenant an amount of \$1,995.00, which is double the original security deposit of \$997.50.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$1995.00. 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.

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: October 02, 2017

Residential Tenancy Branch