



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPN MNSD MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession pursuant to section 55;
- a monetary order for damage to the unit, site, or property, money owed or compensation for 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:11 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing was originally set to deal with the landlord’s application only, but it came to my attention during the hearing that the same parties had a second matter set at an earlier time, 1:30 P.M., on the same date, to deal with the tenant’s cross application pertaining to this same tenancy and security deposit. The landlord failed to attend both hearings. As the tenant was present at both the 1:30 P.M. and 2:00 P.M hearings, and

as both hearings were set to deal with the tenant's security deposit, both applications were dealt with today at 2:00 P.M.

Rule 7.3 of the 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

Accordingly, **in the absence of any submissions in this hearing from the landlord I order the landlord's application dismissed without leave to reapply.**

The tenant provided sworn, undisputed testimony that she had served the landlord with her application for dispute resolution hearing package ("Application") and evidence by way of registered mail on May 4, 2017. The tenant provided a tracking number in her evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence.

Issues(s) to be Decided

Is the tenant entitled to the return of her security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided the following sworn, undisputed testimony as the landlord did not attend the hearing. This tenancy was to begin on April 15, 2017, with monthly rent set at \$2,000.00. The landlord had collected a security deposit of \$1,000.00 and still continues to hold this deposit. The tenant never moved in for this tenancy as she received a text message from the landlord on April 7, 2017 that the tenant would not be given the flex room downstairs as originally agreed on. As the terms and conditions of this tenancy had changed, the tenant decided to not continue with this tenancy. The tenant provided a forwarding address on April 10, 2017, and requested a return of her security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to

either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

In this case, I find that the landlord has not returned the tenant's security deposit within 15 days of the provision of her forwarding address. The tenant gave undisputed sworn testimony that the landlord had not obtained her written authorization to retain any portion of the deposit. The landlord applied to retain the tenant's deposit, but failed to attend the hearing, and the landlord's application was dismissed. Accordingly, I find that the tenant is entitled to return of her \$1,000.00 security deposit.

As the tenant has been successful in her application, I find that the tenant is also entitled to recover her filing fee from the landlord.

Conclusion

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

I issue a \$1,100.00 Monetary Order in the tenant's favour, which allows the tenant to recover the original security, plus recover the filing fee for this application.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. 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 4, 2017

Residential Tenancy Branch