



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, MNDC, MNSD, FF

Introduction

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

- an order of possession based on the tenants' notice to end tenancy, pursuant to section 55;
- 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 tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant LA" did not attend this hearing, which lasted approximately 48 minutes. The landlord's agent SN ("landlord") and tenant MA ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the property manager and rental agent for the landlord company named in this application and that he had authority to speak on its behalf at this hearing. The tenant confirmed that he had permission to speak on behalf of tenant LA, who was named as a respondent in this application, as an agent at this hearing (collectively "tenants").

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 both tenants were duly served with the landlord's application.

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 and 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 \$450.00 from the tenants' security deposit of \$1,000.00;
2. Both parties agreed that the landlord will return the remaining \$550.00 from the tenants' security deposit to the tenants by way of a cheque to be mailed out by December 7, 2017;
 - a. During the hearing, both parties confirmed the tenants' mailing address where the landlord's cheque is to be sent;
3. The landlord agreed that this settlement agreement constitutes a final and binding resolution of the landlord's 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.

Both parties affirmed that they had the authority to agree to this settlement as agents on behalf of the parties that they were representing at this hearing, as noted above.

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 \$450.00 from the tenants' security deposit.

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 tenants' favour in the amount of \$550.00. I deliver this Order to the tenants 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: November 28, 2017

Residential Tenancy Branch