



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNSD

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord D.S. (the "landlord") attended the hearing. The landlord was given a full opportunity to be heard, to present testimony and to make submissions.

The landlord explained that a copy of the landlord's application for dispute resolution and evidentiary package were sent to the tenant by way of Canada Post Registered Mail on June 14, 2017. The landlord provided the Canada Post Tracking Number to the hearing. Pursuant to sections 88, 89 & 90 the *Act*, the tenant is deemed to have been served with these documents on June 19, 2017, five days after their posting.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord retain the tenants' security deposit against money owed?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on March 1, 2015 and ended on May 31, 2017. Rent was \$1,295.50 and a security deposit of \$647.50 collected at the outset of the tenancy continues to be held by the landlord.

The landlord explained that the parties performed an end of tenancy condition inspection of the property on May 31, 2017. A copy of the condition inspection form was provided to the hearing. This document noted that the tenant refused to sign the condition inspection form and did not provide the landlord with a forwarding address.

The landlord said that at some point, following their meeting of May 31, 2017 that the tenant sent the landlord a text message containing a forwarding address.

During the hearing, the landlord explained that he was seeking to retain the tenant's security deposit due to a large amount of damage that occurred in the rental unit. He argued that this damage went beyond normal wear and tear. As part of his evidentiary package, the landlord provided an estimate dated June 4, 2017 that described the various repair work that was required in the rental unit following the end of the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file a claim against a tenant's deposit within 15 days of the *later* of the end of the tenancy or the date a tenant's forwarding address is received in writing. The landlord provided undisputed testimony that he has never received the tenants' forwarding address in writing, and only received it via text message. On June 9, 2017 the landlord applied for dispute resolution to retain the tenant's security deposit. The landlord has therefore fulfilled the requirements of section 38 of the *Act*, as this tenancy ended on May 31, 2017.

Subsections 4 of this section states that, "A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount." I find that the landlord has suffered a loss as a result of this tenancy and may therefore retain the security deposit pursuant to section 38 of the *Act*.

As the landlord was successful in his application he may recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord may recover the \$100.00 filing fee from the tenant. I issue a Monetary Order of \$100.00 in favour of the landlord. The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as

possible. Should the tenant 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 is entitled to retain the security deposit in its entirety.

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 20, 2017

Residential Tenancy Branch