



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

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

- a monetary order for damage to the rental unit 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 landlord did not attend this hearing which lasted approximately 10 minutes. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Background and Evidence

The tenants provided undisputed evidence regarding the following facts. This periodic tenancy began in February, 2016. The tenants paid a security deposit of \$600.00 which is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy. The tenants gave the landlord their forwarding address in writing by a letter posted on the landlord's door on May 31, 2017.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently I dismiss the landlord's application without leave to reapply.

Residential Tenancy Policy Guideline 17 provides in part that, "on a landlord's application to retain all or part of the security deposit...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.***"

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Furthermore, section 24 of the *Act* outlines the consequences if the parties do not meet the requirements to prepare a condition inspection report. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
...
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed evidence before me, I find that the landlord had extinguished her right to apply to retain the security deposit for this tenancy and has failed to return the tenants' security deposit in full.

I accept the evidence of the tenants that they provided written notice of the forwarding address by a letter dated May 31, 2017. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$1,200.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

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

I issue a Monetary Order in the tenants' favour in the amount of \$1,200.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with 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: November 22, 2017

Residential Tenancy Branch