



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

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

- authorization to obtain a return of the remainder of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant tenant did not attend this hearing, which lasted approximately 16 minutes. The respondent landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *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.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- **a tenant's application for the return of the deposit.**

unless the tenant's right to the return of the deposit has been extinguished under the Act. 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.

As per the above, I am required to deal with the tenant's security deposit because the tenant has applied to obtain a return of it, even though the tenant has not appeared at this hearing.

Issue to be Decided

Is the landlord entitled to retain the remainder of the tenant's security deposit?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began November 1, 2016 and ended on April 30, 2017. Monthly rent in the amount of \$6,600.00 was payable on the first day of each month. A security deposit of \$3,300.00 was paid by the tenant and the landlord returned half of it, in the amount of \$1,650.00, to the tenant. No move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was completed by the landlord in the tenant's absence. In his application, the tenant claimed that he provided a written forwarding address to the landlord by way of a letter that was sent by registered mail on May 15, 2017 but the landlord said that he did not recall receiving an address, except by way of this application. The landlord did not have written permission to keep any amount from the deposit. The landlord did not file an application to retain the deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding

address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the landlord at this hearing. The tenancy ended on April 30, 2017. The landlord does not recall receiving a forwarding address from the tenant, except by way of this application.

The tenant did not appear at this hearing to support his application to obtain a return of the remaining deposit and his application was dismissed without leave to reapply. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the landlord is entitled to retain the remainder of the tenant's security deposit in the amount of \$1,650.00.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I order the landlord to retain the remainder of the tenant's security deposit in the amount of \$1,650.00.

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: December 20, 2017

Residential Tenancy Branch