



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEQUIN ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDLS MNRLS MNDCLS FFL

Introduction

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

- A monetary order for damages and loss pursuant to section 67; and
- An order to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The line remained open while the phone system was monitored for fifteen minutes and the only participants who called into the hearing during this time was the respondent, and the respondent's advocate.

The tenant was given an opportunity to present affirmed evidence, make submissions and call witnesses.

Background and Evidence

The tenant gave undisputed evidence regarding the following facts. This periodic tenancy ended in November, 2017. The tenant paid a security deposit of \$425.00 which is still held by the landlord. The tenant provided a forwarding address in writing to the landlord on November 3, 2017.

The landlord's present application was filed on November 14, 2017. The tenant testified that they have not given written authorization that the landlord may retain any portion of the security deposit for this tenancy.

Analysis

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 reapply.

Therefore, as the applicant did not attend the hearing by 1:40 pm, and the respondent appeared and was ready to proceed, I dismiss the landlords' claim without leave to reapply.

Residential Tenancy Policy Guideline #17 provides that the arbitrator will order the return of the security deposit 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. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

In the present circumstance the tenant provided their forwarding address on November 3, 2017 and the landlord filed their application on November 14, 2017. The landlord indicated on their application that they are seeking a monetary order and are holding the security deposit. Based on the claim made, I find that the landlords were applying for an order to retain the security deposit. I find that the landlord filed their application within the 15 days provided under section 38.

As the landlord's application to retain the security deposit is dismissed the tenant is entitled to an order to recover the balance of the deposit, \$425.00. Accordingly, I issue a monetary award in the tenant's favour in that amount.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$425.00 against the landlord.

The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: June 18, 2018

Residential Tenancy Branch