



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

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

- a monetary order for damages 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;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The applicant landlord did not attend this hearing, although I waited until 1:50 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant advised he was served with the landlord's application and Notice of Hearing back in December 2017 but that the landlord did not provide any evidence in support of the application.

Issues

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy ended on November 30, 2017. The tenants paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The tenants provided a forwarding address to the landlord at the end of the tenancy. The landlord filed this application on December 3, 2017 and served the tenants at the forwarding address they provided.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although the landlord made an application to retain the deposit, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. As such, the landlord's application is dismissed in its entirety without leave to reapply.

I find the landlord's application to be frivolous and an abuse of the dispute resolution process. As per Residential Tenancy Policy Guideline #17, the doubling provisions of section 38 therefore apply.

I award the tenants an amount of \$1200.00, which is double the original security deposit of \$600.00.

Conclusion

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

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1200.00. 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: July 24, 2018

Residential Tenancy Branch