



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL; MNSD, FFT

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The three landlords did not attend this hearing, which lasted approximately 27 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package by way of email. He made no issue regarding service by email, as he claimed he provided his forwarding email to the landlords. In accordance with section 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with the landlords' application by email.

The tenant was unable to provide a date or tracking number for service of his application to the landlords by mail. Accordingly, the tenant's application to recover the \$100.00 filing fee for his application is dismissed without leave to reapply.

Preliminary Issue – Dismissal of Landlords' 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 landlords, I order the landlords' 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 landlords have applied to retain it, even though the landlords have not appeared at this hearing and the tenant could not prove service of his application to the landlords.

Issue to be Decided

Is the tenant entitled to a return of double the value of his security deposit?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on June 1, 2017 and ended on March 30, 2018. Monthly rent in the amount of \$4,500.00 was payable

on the first day of each month. A security deposit of \$2,250.00 was paid by the tenant and the landlords continue to retain this deposit in full. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant was not present during the move-out inspection even though the landlords notified him of the inspection, because he was out of the country, and he tried to arrange another date but the landlords were unreachable.

The tenant stated that he provided a forwarding email to the landlords on March 23, 2018. He said he was living out of the country for some time. He provided a copy of this email. He maintained that the landlords forwarded their application to him by way of email. He claimed that the landlords did not have written permission to keep any amount from his security deposit. The landlords filed their application for dispute resolution on March 21, 2018, to keep the tenant's entire security deposit of \$4,500.00 towards unpaid rent of \$9,000.00

Analysis

Section 38 of the *Act* requires the landlords to either return the tenant's security deposit or file for dispute resolution for authorization to retain the 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 landlords are 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 landlords have 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 landlords, 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 tenant. The tenancy ended on March 30, 2018. The tenant did not give the landlords written permission to retain any amount from his security deposit. The landlords did not return the deposit to the tenant.

I find that the tenant provided a written forwarding email to the landlords on March 23, 2018 and the landlords sent their application to the tenant by email. Although email is not permitted by section 88 of the *Act*, I find that the landlords were sufficiently served as per section 71(2)(c) of the *Act*, with the tenant's forwarding email and they acted on it by serving their application to the tenant by email, which the tenant did not contest at

this hearing. The tenant was also living out of the country for some time and could not accept service in Canada.

Although the tenant did not participate in the move-out condition inspection or report, I find that the landlords' right to claim against the security deposit was not extinguished for a loss of rent, which is what they applied for in their application, as extinguishment only applies to claims for damages.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit of \$2,250.00. I find that the tenant is only entitled to receive the original amount of his security deposit, totalling \$2,250.00, from the landlords. I find that the tenant is not entitled to the return of double his deposit even though the landlords did not return the deposit to the tenant within 15 days after the tenancy ended on March 30, 2018, because I find that the landlords pursued their application to claim against the deposit for a loss of rent on March 21, 2018, and the tenant did not serve a forwarding physical mail address using a proper method under section 88 of the *Act*.

Conclusion

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

The tenant's application to recover the \$100.00 paid for his application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of \$2,250.00 against the landlord(s). The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: October 19, 2018

Residential Tenancy Branch