



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNRL-S, MNDCL-S

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order for cleaning, rent and damages, and to retain the security deposit. The Landlord brought her original application, file number identified on the cover page of this decision, but had the Tenant named incorrectly and her Order dated June 14, 2017 was not enforceable. As the original decision and Order was deemed to be null and void, a new Application had to be filed and a new hearing convened to review the merits of the claim.

The hearing was held on June 20, 2018 to present the merits of the claim, with the proper Tenant named; the Tenant did not appear for the scheduled hearing to offer any response.

In my decision dated June 22, 2018, I awarded the Landlord a monetary claim of \$3,198.72; this included a credit to the Tenant for double the security deposit as per section 38 of the Act. The Landlord applied for a review consideration, as there was information that had not been provided at the June 20, 2018 hearing that would impact the outcome with respect to the security deposit that was credited to the Tenant.

The Arbitrator granted this review hearing to provide the Landlord with an additional opportunity to provide information and evidence with respect to the following:

- whether the tenant abandoned the rental unit;
- if not, to consider whether the landlord was obligated to provide at least two opportunities for a condition inspection; and
- whether the tenant provided a forwarding address to the landlord in writing;

Accordingly, this review hearing will only consider those particular issues and whether any adjustment is necessary for the final monetary order. The Landlord’s review application also indicated that she wanted her \$100.00 filing fee but that request was not made in this Application and the Tenant has not had notice of this additional claim in the materials served

upon him; accordingly, I am not prepared to consider the \$100.00 filing fee which the Landlord has paid to file this new Application to correct her error in the name of the Tenant from the original application.

The Landlord appeared for the scheduled review hearing, but no one appeared on behalf of the Tenant on the scheduled date of September 20th. I left the telephone conference line open for 10 minutes past the scheduled hearing time and confirmed that the Landlord and I were the only people on the call. The Landlord provided information to confirm that the Notice of Hearing had been served by registered mail on August 1, 2018 and provided a confirmation code.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Did the Tenant abandon the rental unit, thereby preventing the Landlord from an opportunity to do a proper condition move-out inspection with him?

When did the Tenant provided a forwarding address in writing to the Landlord, if ever?

If not, has the Tenant lost his right to the security deposit?

Background and Evidence

The Landlord stated that the Tenant never provided a forwarding address in writing, nor did he answer her calls or attend to do a move-out inspection. It is her position that he wrongfully sub-let her rental unit to a third party and abandoned it. She states that her agent attempted to speak to the person residing in the rental unit, an argument ensued and police were called; the Landlord says the person had a criminal record. Once the tenancy ended, the remaining property was disposed of by her agent.

The Landlord has submitted *new* evidence for this review hearing which included copies of electronic messages dated October 1, 2016, that state:

“As of now please cancel the Fob and the phone number that I gave you for entrance access. I moved out of the place and for cleaning and what not I forfeit my deposit money and you can have the deposit money for your trouble.”

The Landlord testified that this text message string was from the Tenant and sent to her agent who was managing her property; she wasn't aware of the content of the message until later, and explains this is why it was not submitted with the original Application and evidence package.

The Landlord asks that the Tenant only be given credit for the amount of his original security deposit of \$875.00 and that the doubling provisions of section 38(6) of the Act not be applied as against her monetary award.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a 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. I determined that the Tenant had been served with Notice of the Hearing at an address the Landlord states is his residence, and that he chose not to be represented or appear at the hearing; the review hearing proceeded in his absence.

Under section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit at the end of the tenancy and a landlord must offer at least two opportunities to do that inspection. However, the report may be completed by the landlord alone if the tenant has abandoned the rental unit. I find that this Tenant abandoned the rental unit and there was no opportunity for the Landlord to arrange for a move-out inspection.

Furthermore, under section 39 of the Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the right of the tenant to the return of the security deposit is extinguished. I am satisfied that the Landlord did not receive written notification from the Tenant of his forwarding address, and that the Tenant has forfeited his rights to the security deposit.

I also accept the Landlord's testimony that the text messages were from this Tenant and that he agreed to allow the Landlord to retain the security deposit after having abandoned the rental unit.

The revised monetary award is as follows:

Calculation of Monetary Award:

Rent arrears and loss	4200.00
Late fees allowed per Regulations	50.00
Cleaning and garbage removal	273.00
Carpet cleaning	126.00
Replacement of keys	299.75
Less security deposit retained	(875.00)
Total Monetary Order to Landlord	\$4,073.75

The original monetary order dated June 22, 2018 is hereby set aside and of no force or effect. This new revised monetary order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant shall pay to the Landlord the sum of **\$4,073.75** forthwith.

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: September 28, 2018

Residential Tenancy Branch