



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDCL-S MNRL-S

Introduction

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

- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

SW testified on behalf of the landlord in this hearing, and had full authority to do so. HK attended the hearing, and advised all parties that the tenant RK had passed away on July 18, 2018.

As the landlord was not in possession of the forwarding address for the estate of the deceased tenant, and as I find that the tenant's estate was not served with the landlord's application for dispute resolution, I dismiss the landlord's application with leave to reapply.

The landlord's agent, in the hearing, noted that the landlord was still in possession of the security and pet damage deposits in the amount of \$1,550.00 each deposit, but wanted to ensure their compliance with section 38 of the *Act*. Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

The landlord filed their application within 14 days of the tenant moving out, but since the tenant is now deceased the landlord is not in possession of the forwarding address for

the tenant's estate. The tenant's estate must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenant's security deposit, or make an application for dispute resolution.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

Conclusion

The application to recover the filing fee is dismissed without leave to reapply.

I dismiss the remaining portion of the landlord's application for dispute resolution with leave to reapply.

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 11, 2018

Residential Tenancy Branch