

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, MNSD, FFL, FFT

### Introduction

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

- a Monetary Order pursuant to sections 37 and 67 of the *Act* for compensation for damage caused by the tenant, their pets or guests to the unit, site or property;
- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent pursuant to section 67; and
- a request to recover the filing fee for this application pursuant to section 72 of the *Act*.

This hearing also dealt with the tenants' application pursuant to the *Residential Tenancy Act* for:

- authorization to obtain a return of all or a portion of their security deposit and pet damage deposit pursuant to section 38; and
- a request to recover the filing fee for this application pursuant to section 72 of the *Act*.

The tenants (collectively the "tenant"), the landlord's agent and the owner of the manufactured home park (collectively "the landlord") appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Although the subject rental property is located within a manufactured home park, I find that both parties have correctly filed their respective applications seeking remedy pursuant to the provisions of the *Residential Tenancy Act*. The tenancy agreement

between the parties is **not** such that the tenants rent a manufactured home park site, as defined in section 1 of the *Manufactured Home Park Tenancy Act* (MHPTA). Instead, the tenants rent the manufactured home itself, which falls under the definition of a “rental unit” as defined in section 1 of the *Residential Tenancy Act*, which provides that a rental unit is a “living accommodation rented or intended to be rented to a tenant.”

In addition to the foregoing, at the onset of the tenancy the parties agreed that, pursuant to section 19 of the *Residential Tenancy Act*, a security deposit to secure against damage to the rental unit (which, in this case, is the manufactured home) would be applicable. Based on the foregoing, I find that both applications before me have been correctly filed such that they are to be heard pursuant to the application of the *Residential Tenancy Act* (hereafter referred to as the “Act”)

The landlord testified that they served the notice of dispute resolution package and evidence to the tenants by way of registered mail on November 22, 2018. The tenant confirmed receipt of the documents and accompanying evidence. Therefore, I find that the tenants have been served with the notice of dispute resolution package and the landlord’s evidence in accordance with section the *Act*.

The tenants’ application was set to be heard by way of a separate dispute resolution proceeding scheduled for May 02, 2018. Although the tenants’ application was not scheduled to be heard during this proceeding, during the course of settlement discussions, both parties made reference to the substantive matter which forms the basis of the tenants’ application—namely, the tenants’ request for the return of their security deposit.

As both parties were prepared and able to undertake settlement discussions which incorporated aspects of the tenants’ application, the issue of service of the tenants’ application, and accompanying evidence, on the landlord was not a barrier to the parties’ ability to negotiate a settlement. Therefore, as the parties mutually agreed to engage in settlement discussions in the absence of service of the tenants’ application and evidence, I make no finding with respect to the service of the tenant’s application.

### Background and Evidence

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the

hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Given the agreement reached between the parties during the proceeding, I find that the parties have settled their dispute and the following records this settlement as a decision. Both parties mutually agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The parties agreed to settle the matter by having the tenants pay to the landlord a sum of \$3,500.00.
2. Both parties agreed that the landlord may retain the security deposit to offset the amount owed by the tenants to the landlord.
3. Both parties agreed that the landlord may retain the pet damage deposit to offset the amount owed by the tenants to the landlord.
4. After the security deposit and pet damage deposit, totalling \$900.00, have been relinquished by the tenants and applied to offset the amount owing by the tenants, the tenants agreed to pay the landlord the remaining sum owed to the landlord, in the amount of \$2,600.00 as follows:
  - a. The tenants agreed to pay to the landlord a sum of \$100.00 each month, commencing with the month of February 2018, until such time that the balance of \$2,600.00 owed to the landlord has been paid off in full.
5. Both parties withdraw their respective Applications for Dispute Resolution.

The above particulars comprise the full and final settlement of all aspects of this dispute for both parties arising from the tenancy related to the rental unit identified on the first page of this decision. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms as legal, final and binding, which settle all aspects of this dispute.

### Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, and in order to implement the above settlement reached

between the parties, I issue a monetary Order in the landlord's favour in the amount of \$2,600.00, the amount the tenants agreed to pay to the landlord in accordance with the terms agreed to above.

I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants do not abide by the terms of the settlement agreement and fail to pay the landlord in accordance with condition #4(a) of the above agreement.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible if the tenants do not comply with the terms of the above settlement agreement. Should the tenant(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: January 24, 2019

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Residential Tenancy Branch