



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP

Introduction

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

- a monetary for compensation of \$16,458.00 for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 38;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- a return of the tenants' personal property, pursuant to section 72.

The two applicant tenants did not attend this hearing, which lasted approximately 12 minutes. The respondent landlord's three agents, "landlord MG," "landlord NA" and landlord TC ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Landlord MG confirmed that he was the senior property manager and that landlord NA was the property manager and that all three agents had permission to represent the owner of the rental unit at this hearing. The landlord confirmed that he was the building manager for the rental unit.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord claimed that the tenants provided an altered copy of the notice of hearing to change the hearing date to October 27, 2018 but that he called into the RTB office and was told that the actual hearing date was February 7, 2019.

Preliminary Issue – Dismissal of Tenants' 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 tenants, I order the tenants' 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 tenants' security deposit because the tenant has applied to obtain a return of it, even though the tenants have not appeared at this hearing.

Issue to be Decided

Is the landlord entitled to retain the tenants' security deposit?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on December 1, 2016 and ended on October 3 or 4, 2018. Monthly rent in the amount of \$975.00 was

payable on the first day of each month. A security deposit of \$487.50 was paid by the tenants and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants did not provide a written forwarding address to the landlord except by way of this application. The landlord did not have written permission to keep any amount from the security deposit. The landlord did not file an application to retain the deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' 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 tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the 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 tenants to pay to the landlord, 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 landlord at this hearing. The tenancy ended by October 4, 2018. The tenants provided a written forwarding address only by way of this application. The tenants did not give the landlord written permission to retain any amount from the deposit. The landlord did not return the deposit to the tenants or file an application to retain it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the landlord is entitled to retain the tenants' security deposit, of \$487.50. The tenants did not appear at this hearing to support their application to obtain a return of double the deposit and their application was dismissed so the landlord is entitled to retain the deposit.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I order the landlord to retain the tenants' entire security deposit of \$487.50.

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: February 07, 2019

Residential Tenancy Branch