



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 43 minutes.

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

The tenant said that he served his written evidence package to the landlord's wife by way of email but did not provide a date. The landlord said that he and his wife did not receive the evidence and that the tenant used the incorrect email address for his wife. I notified both parties that I could not consider the tenant's written evidence package because email is not permitted by the *Act*, the email address used was incorrect and the tenant did not provide a service date. However, both parties agreed to settle this matter, so I was not required to consider the tenant's evidence at this hearing.

Settlement Terms

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 and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute and arising out of this tenancy, except for the application filing fee.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time and arising out of this tenancy, except for the application filing fee:

1. Both parties agreed that the landlord will retain \$450.00 from the tenant's security deposit of \$1,250.00;
2. The landlord agreed to return \$800.00 from the tenant's security deposit to the tenant by way of e-transfer by February 13, 2019;
 - a. Both parties confirmed the tenant's correct email address during the hearing to facilitate the e-transfer;
3. The landlord agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing and any issues arising out of this tenancy, except for the application filing fee;
4. Both parties agreed that they will not initiate any future claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy, except for the application filing fee. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute and arising out of this tenancy, except for the application filing fee.

Since both parties were unable to settle the landlord's application for the \$100.00 filing fee, they asked that I make the decision. The filing fee is a discretionary award usually issued to a successful party after a full hearing on the merits. Since I was not required to make a decision on this application and both parties settled this matter, I decline to award the \$100.00 filing fee to the landlord.

Conclusion

I order the landlord to retain \$450.00 from the tenant's security deposit of \$1,250.00.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the tenant's favour in the amount of \$800.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord fails to pay the tenant \$800.00 as per condition #2 of the above agreement. The landlord must be served with a copy of this Order. Should the landlord 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.

The landlord must bear the cost of the \$100.00 filing fee paid for this application.

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 12, 2019

Residential Tenancy Branch