



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant along with her advocate attended the hearing.

Issues

Is the landlord entitled to a monetary order for compensation for loss?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on September 1, 2016 and the tenant vacated the rental unit on May 12, 2019. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

On May 22, 2019, the tenant provided a forwarding address in writing to the landlord. The landlord filed this application on May 29, 2019.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although the landlord made an application to retain the deposit, within 15 days of receipt of a forwarding address, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. As such, the landlord's application is dismissed in its entirety without leave to reapply.

The landlord continues to hold a security deposit in the amount of \$450.00. I order the landlord to return the full amount of the security deposit to the tenant forthwith.

The tenant is granted a Monetary Order in the amount of \$450.00.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

The landlord's application is dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$450.00. 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.

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 06, 2019

Residential Tenancy Branch