



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, 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.

The landlord, the tenant, and the tenant’s lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that his lawyer had permission to speak on his behalf. The tenant intended to call two witnesses, who were excluded from the outset, and did not return, as their evidence was not required. This hearing lasted approximately 33 minutes.

The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package and the landlord confirmed receipt of the tenant’s evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord’s application and the landlord was duly served with the tenant’s evidence package.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord interrupted me, talked at the same time as me, argued with me, and yelled profanities at me. When I told the landlord that I did not receive any receipts or invoices from him and neither did the tenant, the landlord yelled at me and shouted profanities such as “fuck you” and “you fucks don’t care about landlords.” I asked the landlord to confirm the date that he submitted the evidence to myself and the tenant and he refused to do so. I cautioned the landlord multiple times to stop yelling and swearing at me or I would disconnect him from the conference and dismiss his application without leave to reapply. The landlord continued to yell and swear at me so I disconnected him from the conference at 2:02 p.m. The hearing began at 1:30 p.m. and ended at 2:03 p.m.

I caution the landlord to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent or for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant’s security deposit?

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

Background and Evidence

Both parties agreed to the following facts. This tenancy ended on November 30, 2018. Monthly rent in the amount of \$2,050.00 was payable on the first day of each month. A security deposit of \$1,300.00 was paid by the tenant and the landlord continues to retain this deposit. Written tenancy agreements were signed by both parties. The landlord obtained the tenant's forwarding address by following him to his new home on November 30, 2018. The landlord did not have written permission to keep any part of the tenant's security deposit. The landlord's application to retain the tenant's deposit was filed on June 23, 2019.

The landlord said that the tenancy began on January 1, 2015, while the tenant's lawyer claimed that it was December 21, 2014. The landlord claimed that move-in and move-out condition inspection reports were completed for this tenancy and the move-in report was signed by the tenant. The tenant's lawyer said that no move-in or move-out condition inspection reports were completed with the tenant or signed by him.

The landlord applied for a monetary order of \$34,350.00 plus the \$100.00 application filing fee. The tenant disputes the landlord's entire application.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

During the hearing, the landlord was not prepared to go through his monetary claim, itemize the damages, discuss the amounts being claimed, or provide proof of receipts or invoices. When I asked the landlord repeatedly to prove his claim, he yelled profanities at me. Despite the numerous opportunities that I provided to the landlord, he was more

intent on making profane comments about the RTB, rather than proving his claim. The landlord refused to participate in the hearing and prove his claim on a balance of probabilities. I find that the landlord failed to prove all four parts of the test above. Accordingly, the landlord's application for a monetary order of \$34,350.00 is dismissed without leave to reapply.

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

Since the landlord applied to retain the tenant's security deposit, I must deal with its return to the tenant, even if the tenant did not apply for its return, as per Residential Tenancy Policy Guideline 17.

Section 38 of the *Act* requires the landlord to either return the tenant's 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 tenant's 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 tenant's 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 tenant 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 testimony of both parties. The tenancy ended on November 30, 2018. The landlord obtained the tenant's forwarding address by following him on November 30, 2018. The landlord used this address to send the tenant the landlord's application and evidence for this hearing. Accordingly, I find that the landlord was sufficiently served with the tenant's forwarding address, as per section 71(2)(c) of the *Act*.

The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full deposit to the tenant. The landlord filed an application for dispute resolution to claim against the deposit on June 23, 2019, more than 15 days after November 30, 2018.

In accordance with section 38(6)(b) of the Act and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of his security deposit of \$1,300.00, totaling \$2,600.00. The tenant is provided with a monetary order for same. There is no interest payable on the deposit during the period of this tenancy. Although the tenant did not apply for the return of double his security deposit, he is not required to, as I must consider the doubling provision, as per Policy Guideline 17. The tenant did not waive his right to claim double the value of the security deposit.

Conclusion

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

I issue a monetary Order in the tenant's favour in the amount of \$2,600.00 against the landlord. The landlord must be served with this Order as soon as possible. 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: October 04, 2019

Residential Tenancy Branch