



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order of \$6,157.44 for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 11 minutes. The respondent tenants 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 tenants stated that they did not receive the landlord's application for dispute resolution hearing package. They claimed that they found out about the hearing from the Residential Tenancy Branch email that was sent to them.

Preliminary Issue – Dismissal of Landlord's 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 landlord, I order the landlord's application for a monetary order for damage to the rental unit, for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, and to recover the \$100.00 application filing fee, 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' deposits because the landlord has applied to retain them, even though the landlord has not appeared at this hearing.

The tenants confirmed that they paid a security deposit of \$1,150.00 and a pet damage deposit of \$575.00 to the landlord and he continues to retain them. The tenants testified that they wanted the landlord to retain both deposits because they did not want to deal with him anymore. Although I informed the tenants that they may be entitled to a return of both deposits, they repeatedly confirmed that they wanted the landlord to retain both deposits.

Over the period of this tenancy, no interest is payable on the deposits. 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' entire security and pet damage deposits totalling \$1,725.00.

Conclusion

The landlord's application for a monetary order for damage to the rental unit, for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, and to recover the filing fee, is dismissed without leave to reapply.

I order the landlord to retain the tenants' entire security and pet damage deposits totalling \$1,725.00.

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: December 18, 2019

Residential Tenancy Branch