



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCL-S FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee pursuant to section 72.

The tenants applied for:

- A return of the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants gave evidence that they had served the landlord with their application, evidence and subsequent amendments by registered mail. The tenants provided a valid Canada Post tracking number showing the package was sent on November 2, 2019. Based on the evidence I find the landlord is deemed served with the tenant’s materials on November 7, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Are the tenants entitled to a return of the security deposit?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

This tenancy began in June 2019. Monthly rent was \$1,950.00 payable on the first of each month. A security deposit of \$975.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at anytime for this tenancy.

The tenancy ended in September 2019 and the tenants provided their forwarding address in writing by correspondence dated October 8, 2019. The tenants gave evidence that they have not given written authorization that the landlord may retain any portion of the deposit for this tenancy.

Analysis

Rule 7.3 of the 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 reapply.

Accordingly, as the landlord failed to attend the hearing I dismiss the landlord's application without leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the tenant that they provided their forwarding address in writing on October 8, 2019. I find that the landlord did file an application for authorization to retain the deposit on October 20, 2019, within the 15 days provided under the Act.

However, the landlord failed to attend the hearing and pursue their application. I accept that the landlord has failed to return the tenants' security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$975.00 Monetary Order, the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

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

I issue a monetary order in the tenants' favour in the amount of \$1,075.00. 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: March 16, 2020

Residential Tenancy Branch