



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNRL-S, MNDCL, FFL
For the Tenant: MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- \$3,971.44 compensation for a monetary order for unpaid rent and utilities, retaining the security deposit to apply to this claim; and
- recovery of the \$100.00 Application filing fee.

The Tenant filed a claim for:

- the return of the \$1,700.00 security deposit; and
- recovery of the \$100.00 Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony, however, no one attended on behalf of the Landlords. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide his evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlords did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlords with the Notice of Hearing documents by mail and email on March 3, 2020, and he said he left a copy of the documents at the rental unit, as well.

Further, I find that the Landlords had the teleconference hearing information, as they had applied for dispute resolution, themselves. The Landlords' Notice of Dispute Resolution Hearing has the same call-in information for the teleconference hearing, as that of the Tenant.

I find that the Landlords had copies and were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Tenant's application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlords.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Tenant and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on June 26, 2020, as scheduled.

Rule 7.3 states that 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. The teleconference line remained open for 30 minutes, however, neither the Landlords nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, **I dismiss the Landlords' application without leave to reapply.**

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and the Tenant confirmed his email address in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of his \$100.00 application filing fee?

Background and Evidence

The Tenant said that the fixed term tenancy began on January 1, 2019, with a monthly rent of \$3,400.00, due on the first day of each month. The Tenant said that he paid the Landlords a security deposit of \$1,700.00, and no pet damage deposit.

The Tenant submitted a copy of a condition inspection report ("CIR") regarding an inspection conducted at the start of the tenancy; however, the move-out portion of the CIR was not completed. The Tenant said that he moved out on December 1, 2019, and that the Landlords were unavailable to participate in the move-out condition inspection, and they provided him with no information in this regard.

The Tenant said he provided the Landlords with his written forwarding address via text on January 27, 2020.

The Tenant said that he moved out, because the Landlords required him to pay the water, sewage, and garbage costs of the residential property, and that it became too expensive, in addition to the monthly rent. The Tenant said the Parties did not have a tenancy agreement that they both signed, but rather, each had their respective signature on their own copy. Further, the Landlords' version indicated that the Tenant was responsible for the additional utilities' costs. The Tenant said that this was a surprise to him.

The Tenant said that the Landlords did not give him an address for service; therefore, the Parties came to rely on text messaging and email for communication purposes.

TENANT'S CLAIM

In his Application, the Tenant seeks the return of his \$1,700.00 security deposit. The Tenant said he let the Landlord, W.W., know that he would be ending the tenancy agreement at the end of the fixed term "...six months, two months and one month prior to the end of the tenancy. I don't have his address, so I couldn't serve him with a formal

written notice.” The Tenant said he served the Landlords with documents by sending them to the rental unit, as that was the only address he had for the Landlord.

The Landlord submitted a copy of the tenancy agreement, which had an address for service for the Landlord; however, the Tenant said that the Landlord did not give him this copy until serving it with the Landlords’ application for this hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Tenant provided his forwarding address on January 27, 2020, and the tenancy ended on December 1, 2019. Section 38(1) of the Act states the following about these dates in terms of the security deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlords were required to return the \$1,700.00 security deposit within fifteen days after January 27, 2020, namely by February 11, 2020, or to apply for dispute resolution to claim against the security deposit. The Landlords provided no evidence that they returned any amount of the security deposit; however, on February 4, 2020, they applied to the RTB for dispute resolution to claim against the deposit. Accordingly, I find the Landlords complied with their obligations under section 38(1) of the Act.

However, the Landlords failed to attend the teleconference hearing to present the merits of their claim, and therefore, I dismissed their application without leave to reapply,

pursuant to Rule 7.3.

Based on the evidence before me in this matter and on a balance of probabilities, I find that the Tenant is entitled to recovery of his \$1,700.00 security deposit. I, therefore, award the Tenant with **\$1,700.00** from the Landlord in this matter, pursuant to section 67 of the Act.

Given his successful application, I also award the Tenant with recovery of his **\$100.00** application filing fee, pursuant to section 72 of the Act. I grant the Tenant a Monetary Order from the Landlord of \$1,800.00, pursuant to section 67 of the Act.

Conclusion

The Landlords' application is dismissed without leave to reapply, as they failed to attend the teleconference hearing to present the merits of their claims.

The Tenant is successful in his application for recovery of the \$1,700.00 security deposit and the \$100.00 application filing fee. I award the Tenant a Monetary Order of **\$1,800.00** from the Landlords, pursuant to section 67 of the Act.

This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 26, 2020

Residential Tenancy Branch