



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and loss of \$2,700.00, pursuant to section 67;
- authorization to retain the tenants' security deposit, 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 15 minutes. The respondent female tenant ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that she had permission to represent the "male tenant," who she said is her husband, at this hearing.

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

The tenant confirmed that this hearing was initially scheduled for January 9, 2020 at 1:30 p.m. and was rescheduled by the consent of both parties by way of a letter, dated December 10, 2019, to this hearing date of July 7, 2020. A copy of the letter was provided. The tenant confirmed that she attempted to reschedule the July 7, 2020 hearing date but the landlord did not consent or sign a letter, so it was not rescheduled again.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the tenant's surname, as she indicated it was legally changed through marriage. The tenant consented to this amendment during the hearing. I find no prejudice to the landlord in making this amendment.

Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states:

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 entire application 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' security deposit because the landlord has applied to retain it. The landlord did not appear at this hearing to support its application to retain the security deposit and the landlord's application was dismissed without leave to reapply.

The tenant confirmed that the tenants paid a security deposit of \$1,100.00 to the landlord and the landlord continued to retain this deposit. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlord to return the security deposit of \$1,100.00 to the tenants. The tenants are provided with a monetary order for \$1,100.00.

The tenant confirmed that the landlord already returned the \$1,100.00 pet damage deposit to the tenants.

Conclusion

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

I issue a monetary order in the tenants' favour in the amount of \$1,100.00 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: July 07, 2020

Residential Tenancy Branch