



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF / MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:00 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide testimony, to present evidence and to make submissions.

The landlord provided testimony through her translator. The landlord testified that on March 31, 2020 and on July 14, 2020, she sent a copy of the Application for Dispute Resolution, Notice of Hearing and amended application to the tenant by registered mail. Registered mail receipts and tracking numbers were provided in support of service.

Based on the above evidence, I am satisfied that the tenant was served with both the landlord's original and amended Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. Additionally, the tenant had filed her own application which was scheduled to be heard at the same time as the landlord's application; therefore, the tenant should have been aware of the hearing date and time.

The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to compensation for loss?

Is the landlord entitled to retain all or a portion of the security deposit?

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

Is the tenant entitled to a return of all or a portion of the security deposit and her filing fee?

Background and Evidence

The tenancy began on June 1, 2017 and ended on March 1, 2020. The tenant paid a security deposit of \$2250.00 at the start of the tenancy of which the landlord continues to retain \$500.00. The balance was returned to the tenant on March 15, 2020.

The landlord is claiming \$500.00 in compensation for loss as a result of a fine levied by the city. The landlord testified the tenant was in breach of city by-laws and the tenancy agreement by operating a short-term rental out of the rental unit. The landlord testified this was not authorized by the landlord nor was the landlord aware. The landlord submitted proof of the fine which has since been paid by the landlord.

The landlord is also claiming various fees relating to the costs incurred for mailing and printing documents for the application, translator fees and also \$2000.00 for mental loss. The landlord testified she spent a lot of time preparing for this dispute.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

I accept the landlord's uncontested testimony and evidence and find that the landlord suffered a loss in the amount of \$500.00 due to the tenant illegally operating a short-term rental. The landlord is awarded \$500.00 as claimed.

The landlord's claim for mailing, printing and translator fees is dismissed as these dispute related costs are not recoverable under the Act aside for the application fee itself.

The landlord's claim for \$2000.00 for mental loss is also dismissed as the failed to demonstrate she suffered this loss.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application from the tenant.

The landlord is awarded a total of \$500.00. The landlord may retain the balance of the tenant's security deposit in full satisfaction of this award.

The tenant's application requesting a return of the security deposit and filing fee is dismissed without leave to reapply.

Conclusion

The landlord may retain the balance of the tenant's security deposit in the amount of \$500.00.

The tenant's application is dismissed without leave to reapply.

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: August 04, 2020

Residential Tenancy Branch