



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on July 9, 2020 lasted approximately 8 minutes and the "second hearing" on August 17, 2020 lasted approximately 11 minutes.

The "female landlord" did not attend both hearings. The male landlord ("landlord") attended the first hearing only. No one attended the hearing on behalf of the landlord at the second hearing. The tenant attended both hearings.

I confirmed that the correct call-in numbers and participant codes had been provided in the adjourned Notice of Hearing, dated July 10, 2020. I also confirmed from the teleconference system that the tenant and I were the only people who called into the second hearing.

At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on July 9, 2020 was adjourned because the tenant was unable to get time off from work. The landlord consented to the adjournment. I issued an interim decision, dated July 9, 2020, adjourning the first hearing to the second hearing.

The tenant confirmed receipt of my interim decision and adjourned notice of hearing on July 10, 2020, by way of email, from the Residential Tenancy Branch (“RTB”).

The RTB online system states that the landlords were sent a copy of the interim decision and adjourned notice of hearing to the landlord’s email on July 10, 2020. The landlord’s email address was confirmed by the landlord at the first hearing before me.

At the second hearing, the tenant confirmed receipt of the landlords’ 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 landlords’ application. Accordingly, I proceeded with the second hearing in the absence of the landlords.

Preliminary Issue – Dismissal of Landlords’ Application

The first hearing only dealt with the adjournment issue, not the merits of the landlords’ application. The first hearing was then adjourned to the second hearing.

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 landlords, I order the landlords’ entire application dismissed without leave to reapply.

Return of Tenant’s Security Deposit – 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 tenant's security deposit because the landlords applied to retain it in this application. The landlords did not appear at the second hearing to support their application to retain the security deposit and the landlords' application was dismissed without leave to reapply.

At the second hearing, the tenant testified regarding the following facts. This tenancy began on September 15, 2015 and ended on May 31, 2020. A written tenancy agreement was signed by both parties. Monthly rent of \$1,456.00 was payable on the first day of each month. The tenant paid a security deposit of \$650.00 to the landlords and the landlords continue to retain this deposit. Move-in and move-out condition inspection reports were completed by both parties for this tenancy. A written forwarding address was provided by the tenant to the landlords by way of the move-out condition inspection report on May 31, 2020.

The landlords filed this application to retain the security deposit on June 10, 2020.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlords to return the security deposit of \$650.00 to the tenant. The tenant is provided with a monetary order for \$650.00. I find that the tenant did not extinguish her right to the return of the security deposit.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$650.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: August 17, 2020

Residential Tenancy Branch