



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

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

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female landlord" did not attend this hearing, which lasted approximately 28 minutes. The male landlord ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed that he had permission to represent the female landlord at this hearing (collectively "landlords").

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

The tenant's security deposit application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlords.

An "interim decision," dated September 8, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenant was required to serve the landlords with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord confirmed receipt of the above documents. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the above documents.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and an order.

During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute and arising out of this tenancy, except for the tenant's application to recover the filing fee.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time and arising out of this tenancy, except for the tenant's application to recover the filing fee:

1. Both parties agreed that the landlords will return the tenant's security deposit of \$250.00 to the tenant, by way of e-transfer to the tenant's email address, by October 26, 2020;
 - a. During the hearing, both parties confirmed the tenant's email address to facilitate the above e-transfer;
2. Both parties agreed that the tenant will pick up her mail from the landlords' mailbox at the rental property by October 26, 2020;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application at this hearing and any issues arising out of this tenancy, except for the \$100.00 filing fee for this current application;
4. Both parties agreed that they will not initiate any future claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute and arising out of this tenancy, except for the filing fee.

Both parties confirmed that they wanted me to make a decision regarding the tenant's \$100.00 application filing fee because they were unable to settle the matter.

The filing fee is a discretionary award issued by an Arbitrator usually after a party is fully successful on the merits of the application, once a full hearing has been conducted and the Arbitrator makes a decision about the merits. As I was not required to make a decision on the merits of the tenant's application and the matter was settled voluntarily between the parties, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. This portion of the tenant's application is dismissed without leave to reapply.

Conclusion

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the tenant's favour in the amount of \$250.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord(s) do not abide by condition #1 of the above agreement. The landlord(s) must be served with a copy of this Order as soon as possible after the landlord(s) does not abide by condition #1 of the above agreement. 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.

The tenant's application to recover the \$100.00 filing fee 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: October 26, 2020

Residential Tenancy Branch