



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

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

- 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;
- a monetary order for compensation for loss under the Act in the amount of \$6,375 caused by the tenant vacating the rental unit prior to the end of the fixed-term tenancy pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

This is the landlord's application. As such, it bears the onus to prove its claim. As the landlord failed to attend the hearing, I find that it has failed to discharge its evidentiary burden to prove that it is entitled to the order sought. Pursuant to Rule of Procedure 7.4, it

(or its agent) must attend the hearing and present its evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the landlord to the Residential Tenancy Branch in advance of the hearing.

I dismiss the application, in its entirety, without leave to reapply.

As the landlord applied to retain the tenant's security and pet damage deposit, and as its application has been dismissed, it does not have the right to retain these deposits any longer.

I note that the tenant testified that, on October 2, 2020, she offered to allow the landlord to retain the deposits in satisfaction of any damages they might claim against her. She testified that the landlord did not respond to this offer or return a copy of the mutual agreement to end tenancy she enclosed with the offer. Rather, she testified that the landlord made this application on November 3, 2020.

The tenant testified that she paid a security deposit of \$762.50 and a pet damage deposit of \$762.50 at the start of the tenancy. These amounts correspond to the amount of the tenancy agreement she submitted into evidence. The tenant testified she provided the landlord with her forwarding address prior to vacating the rental unit. The notice of dispute resolution lists the tenant's address for service as the forwarding address provided.

As such, the tenant has satisfied the conditions for the return of the deposits.

I find that the landlord did not accept the tenant's offer to allow them to retain the deposits, as, had they done so, the landlord would not have made this application.

Accordingly, I find that the landlord has no basis to retain the deposits. They must be returned to the tenant.

Pursuant to section 62 of the Act, I order the landlord to pay the tenant \$1525, representing the return of the security and pet damage deposit, no later than 15 days after being served a copy of this decision and the attached order by the tenant.

I order the tenant to serve the landlord with a copy of this decision and attached order immediately upon receipt from the Residential Tenancy Branch.

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: February 19, 2021

Residential Tenancy Branch