Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNRL-S, MNDCL-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 of $3,467.88 and compensation for damage or loss of $1,733.94 under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of $845.00, pursuant to section 38; and
- authorization to recover the filing fee of $100.00 for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 11 minutes. The respondent 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 hearing began at 1:30 p.m. and ended at 1:41 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I monitored the telephone line and confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference. The landlord or any agents on behalf of the landlord did not call into the hearing at any time during the hearing.

The tenant stated that he did not receive the landlord's application for dispute resolution hearing package. He claimed that he found out about the hearing from the Residential Tenancy Branch ("RTB") email that was sent to him directly by the RTB. He claimed that he called the RTB and was given the phone number and access code to call into the hearing.

Preliminary Issue – Dismissal of Landlord's Application

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 landlord, I order the landlord's application for a monetary order for unpaid rent, for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and to recover the $100.00 application filing fee, 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 provision, I am required to deal with the tenant's security deposit because the landlord has applied to retain it, even though the landlord has not appeared at this hearing.

The tenant confirmed that he paid a security deposit of $845.00 to the landlord, who continues to retain it in full. The tenant testified that he gave written permission for the landlord to keep his entire security deposit of $845.00 towards rent because the tenant vacated the rental unit early. The tenant confirmed that he did not want his security deposit back and he wanted the landlord to retain it in full.

Over the period of this tenancy, no interest is payable on the security deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17*,* I order the landlord to retain the tenant's entire security deposit of $845.00.

Conclusion

The landlord's application for a monetary order for unpaid rent, for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and to recover the filing fee, is dismissed without leave to reapply.

I order the landlord to retain the tenant's entire security deposit of $845.00.

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: March 30, 2021

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Residential Tenancy Branch