



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to retain the deposits for this tenancy pursuant to section 38.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This fixed-term tenancy began on December 1, 2019 and ended November 30, 2020. The monthly rent was \$1,795.00 payable on the first of each month. A security deposit of \$897.50 and pet damage deposit of \$897.50 were paid at the start of the tenancy and are still held by the landlord. The tenant provided a forwarding address to the landlord in writing on

November 30, 2020. The tenant did not provide written authorization allowing the landlord to retain any portion of the deposits for this tenancy.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently, as the landlord failed to attend the hearing I dismiss the application in its entirety without leave to reapply.

Residential Tenancy Policy Guideline 17 provides in part that, “on a landlord’s application to retain all or part of the security deposit...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.***”

Section 38 of the *Act* requires the landlord to either return the tenant’s security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposit.

In the present case, I accept the undisputed evidence that the tenant provided a forwarding address to the landlord on November 30, 2020 the same date the tenancy ended. I therefore find that the landlord had 15 days from that date to either return the deposits in full or file an application for authorization to retain the deposits. The landlord filed the present application on December 23, 2020, outside of the 15 days provided under the statute.

I accept the undisputed evidence of the tenant that they have not waived their right to payment pursuant to section 38 of the *Act* as a result of the landlord’s failure to abide by the provisions of that section.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary order in the amount of \$3,590.00, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

Conclusion

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

I issue a Monetary Order in the tenant's favour in the amount of \$3,590.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: April 30, 2021

Residential Tenancy Branch