



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDL

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

MM ("landlord") appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

At the outset of the hearing, the tenant confirmed that she was not disputing the landlord's monetary claim of \$190.00. As the landlord continues to hold \$190.00 of the tenant's security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the remaining \$190.00 of the tenant's security deposit. The tenant confirmed that she was disputing the landlord's application to recover the filing fee.

Issue(s) to be Decided

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed-term tenancy began on July 1, 2020 and ended on December 31, 2020. Monthly rent was set at \$900.00 plus \$25.00 for parking and \$18.00 for insurance, payable on the first of every month. The landlord had collected a security deposit of \$450.00 and a pet damage deposit of \$200.00. The landlord returned \$460.00 to the tenant at the end of the tenancy, and applied to keep the remaining \$190.00 on January 12, 2021 after a move-out inspection was completed on December 31, 2020, and the tenant did not agree to the \$190.00 deduction for cleaning and damages. The landlord submitted a copy of the move-out inspection report confirming that the tenant did not agree to the deduction.

The tenant confirmed that the landlord had returned \$460.00 to her. Both parties confirmed in the hearing that the tenant had sent the landlord an email on March 26, 2021 that she was no longer disputing the landlord's claim of \$190.00 for cleaning and damages. The email was submitted in evidence, which reads "Afternoon, I have received your cheque and resolution proceeding documents. After reviewing, I will accept your \$190.00 claim".

The tenant testified that as she was no longer disputing the monetary claim, and due to the numerous issues she had to deal with, the tenant did not feel that they should have to reimburse the landlord the filing fee.

The landlord testified that the tenant had only agreed to settle the matter after the landlord was forced to file an application for dispute resolution, resulting in a \$100.00 loss for the landlord that could have been avoided if the tenant were to agree before the landlord filed their application.

Analysis

The landlord is seeking the recovery of the \$100.00 paid for this application. The tenant is not disputing the \$190.00 claim filed by the landlord on January 12, 2021, as confirmed in an email dated March 26, 2021, and again in the hearing.

Although the tenant confirmed that she was no longer disputing the \$190.00 monetary claim, I find that this consent was not given until after the landlord had filed their application on January 12, 2021, and thus incurred a \$100.00 filing fee in doing so. Section 38 of the *Act* states that the landlord must file an application to retain the tenant's security deposit within 15 days of the end of the tenancy, or receipt of the tenant's forwarding address, whichever is later. Failing that, the landlord may be required to pay the tenant double their original deposit if the tenant did not consent the

retention of the deposit. In this case, as the tenant did not consent to the retention of the \$190.00, the landlord had no option but to file an application for dispute resolution. Although the tenant referenced issues that arose out of this tenancy, the tenant did not file an application against the landlord for monetary compensation, and therefore the landlord's monetary claim cannot be offset with the tenant's claims. I therefore find, pursuant to section 72 of the *Act*, that the landlord is entitled to recover the \$100.00 filing fee from the tenant for this dispute.

Conclusion

The tenant confirmed that they were consented to the landlord's monetary claim of \$190.00. As the landlord continues to hold \$190.00 of the tenant's security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the remaining \$190.00 of the tenant's security deposit.

I issue a monetary order in the amount of \$100.00 in the landlord's favour for recovery of the filing fee for this application.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(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: May 19, 2021

Residential Tenancy Branch