



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on January 19, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for \$14,390.00 for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 13 minutes. The respondent two tenants (male and female) 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 hearing began at 1:30 p.m. and ended at 1:43 p.m. 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 tenants and I were the only people who called into this teleconference.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of a hearing by any party.

During the hearing, I explained the hearing process to the tenants. The tenants had an opportunity to ask questions. The tenants stated that they were ready to proceed with the hearing, and they did not make any adjournment or accommodation requests.

The female tenant confirmed receipt of one page of the landlord's application for dispute resolution. She said that the RTB provided the tenants with the remainder of the landlord's application for dispute resolution and the notice of hearing, but not any of the landlord's evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and notice of hearing.

Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the RTB *Rules of Procedure* states:

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 entire application 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, I am required to deal with the tenants' security deposit because the landlord has applied to retain it. The landlord did not appear at this hearing to support his application to retain the security deposit and the landlord's application was dismissed without leave to reapply, as noted above.

The male tenant stated the following facts. This tenancy began on February 1, 2020 and ended on June 30, 2020. Monthly rent of \$5,000.00 was payable on the first day of each month. A security deposit of \$2,500.00 was paid by the tenants and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenants to the landlord by way of registered mail on January 4, 2021. The landlord confirmed receipt of the forwarding address by sending an email to the tenants on January 6, 2021. The landlord did not have written permission to keep any part of the tenants' security deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlord to return the security deposit of \$2,500.00 to the tenants. The tenants are provided with a monetary order for same. I find that the tenants did not extinguish their right to the return of their deposit.

Conclusion

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

I issue a monetary order in the tenants' favour in the amount of \$2,500.00 against the landlord. 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: May 25, 2021

Residential Tenancy Branch