



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONN LODGE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL-S, MNDCL, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary in the amount of \$4,087.45 for unpaid rent or utilities, for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord, IF (agent) attended the teleconference hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 11, 2021 (Notice of Hearing), application and documentary evidence were considered.

Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed the respective email addresses for both parties at the outset of the hearing and stated that they understood that the decision would be emailed to them.

The company name of the landlord was corrected during the hearing from the agent name to the company name pursuant to section 64(3)(c) of the Act.

Regarding service, the agent was affirmed and referred to a postal receipt, which did not appear to be a registered tracking number. As a result and during the hearing, the Canada Post registered mail tracking website was checked with all numbers listed on the receipt submitted by the landlord and no tracking information was listed, which I find supports that the documents were not sent by registered mail to the tenant. The forwarding address according to the agent was written by the tenant as their brother's address on the Outgoing Condition Inspection Report dated March 1, 2021, which was also submitted in evidence.

Both parties have the right to a fair hearing. The tenant would not be aware of the hearing without having received the Notice of a Dispute Resolution Proceeding and application. Section 89(1)(d) of the Act requires registered mail and not regular mail. Therefore, I **dismiss** the landlord's application **with leave to reapply** as I am not satisfied that the tenant has been sufficiently served with the Notice of Hearing and application in a manner provided for under the Act. I note this decision does not extend any applicable time limits under the Act.

As the landlord has claimed against the tenant's \$750.00 security deposit, I must address the security deposit in this decision. The agent affirmed and as indicated above, the tenant provided their written forwarding address on March 1, 2021 and the landlord filed their application claiming towards the security deposit on March 4, 2021. As a result, I find the landlord filed their application within the 15-day requirement pursuant to section 38 of the Act. As the application did not proceed solely based on a service issue, and pursuant to section 38 of the Act, I ORDER the landlord to return the tenants **\$750.00** security deposit within 15 days of this hearing, **July 22, 2021**, to the written forwarding address provided by the tenant on the outgoing Condition Inspection Report dated March 1, 2021. I note that the 15 days applies to the payment being postmarked within 15 days, not received by the tenants within 15 days, as the landlord is unable to account for mail delays.

Should the landlord fail to comply with my order, I tenant has liberty to apply for remedy under the Act.

I do not grant the filing fee as a result of the service issue.

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue.

This decision does not extend any applicable time limits under the Act.

The landlord has been ordered to return the tenant's security deposit of \$750.00 within 15 days of July 22, 2021.

The filing fee is not granted as noted above.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 22, 2021

Residential Tenancy Branch