



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: MNRL-S, FFL

TT: MNSDS-DR, FFT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38;
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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.

The tenant testified that they served the landlord with their notice of application and evidence by registered mail sent on March 16, 2021. The tenant provided a valid

Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on March 21, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit for this tenancy?

Is the tenant entitled to recover their filing fee from the landlord?

Is the landlord entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy began in 2019. Monthly rent was \$1,100.00 payable on the first of each month. A security deposit of \$550.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenancy ended on February 1, 2021. The tenant provided their forwarding address to the landlord on February 16, 2021. The tenant did not provide written authorization that the landlord may retain any portion of the deposit 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 I dismiss the landlord's application in its entirety without leave to reapply.

Section 38 of the *Act* requires a landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case the tenant gave undisputed evidence that they provided their forwarding address to the landlord on February 16, 2021. The landlord filed their application for dispute resolution seeking authorization to retain the security deposit on February 26, 2021. Accordingly, I find that the landlord was within the 15-day timeline granted under the *Act* to claim against the deposit.

I accept the undisputed evidence of the tenant that they have not given written authorization that the landlord may retain any portion of the deposit. Accordingly, pursuant to section 38 I find that the tenant is entitled to a monetary award in the amount of \$550.00, the value of the security deposit for this tenancy. No interest is payable on this amount.

As the tenant was successful in their application they are also entitled to recover their filing fee from the landlord.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$650.00, allowing for the recovery of the filing fee and security deposit for this tenancy. The landlord must be served with this Order as soon as possible. Should the tenant 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: July 15, 2021

Residential Tenancy Branch