



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSD-DR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenant attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlords stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 25, 2021. The tenant stated that he did not receive a notice or the package. The landlords provided the Canada Post Tracking Number (noted on the cover of this decision) during

the hearing as confirmation of service. As this is a disputed issue regarding service, the Canada Post online tracking website was searched using this tracking number. It states that a package was received by Canada Post on March 25, 2021; went out for delivery on March 29, 2021 and a notice was left to pick up at the post office; on April 3, 2021 a Final Notice was left to pick up the package or it would be returned to the sender within 10 days. On this basis, I find that the landlords did properly serve the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 25, 2021. Despite the tenant not receiving the package as it was returned to the sender, the tenant is deemed served as per section 90 of the Act 5 days later on March 30, 2021. Both parties were informed that as the tenant did not have access to any of the documentary evidence provided by the landlord that on each case where the landlords would refer to one of the documentary evidence files the tenant would be provided a detailed description of the evidence and an opportunity to respond to it.

The tenant stated that he served the notice of hearing package to the landlords by placing it on the floor next to the door. The tenant was unable to provide a date for service. The landlords disputed that no such package was received. The tenant stated that he had a witness present during the service but that no documentary evidence was provided in support of this claim. On this basis, the tenant's application for dispute was dismissed with leave to reapply for lack of service. Leave to reapply is not an extension of any applicable limitation period.

Extensive discussions took place in which the landlords clarified that despite applying for a monetary claim of \$700.00, the landlords monetary claim is for \$580.00 which consists of \$250.00 for drywall repairs; \$230.00 for cleaning; and recovery of the \$100.00 filing fee.

Discussions took place with both parties as they indicated an interest to settle the dispute.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

The landlords agreed to cancel their application for dispute.

The tenant agreed to cancel his application for dispute.

Both parties agreed that the landlords would retain \$500.00 of the \$687.50 security deposit held by the landlords. Both parties agreed that the landlords would return the remaining \$187.50 to the tenant, which both parties agreed constituted a final and binding resolution of all monetary issues under dispute in both of their applications for dispute resolution.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

In order to implement the above settlement reached between the parties, I issue a monetary order in the tenant's favour in the amount of \$187.50. I deliver this Order to the tenant in support of the above agreement for use in the event that the landlord(s) do not abide by the terms of the above settlement. The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 23, 2021

Residential Tenancy Branch