



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S , FFL

Introduction

This hearing was scheduled to deal with a landlord's Application for Dispute Resolution filed on March 14, 2021 for unpaid rent and authorization to retain the tenant's security deposit.

An agent appeared on behalf of the landlord at the hearing. One of the named co-tenants appeared, along with an assistant. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and procedural matters

At the outset of the hearing, I explored service of hearing materials.

The landlord's agent testified that he sent a proceeding package and evidence to each of the tenants, at the tenant's forwarding address, via registered mail shortly after filing although he did not have the date of mailing before him. The tenant confirmed a registered mail package for each of the co-tenants was received at the forwarding address provided when the keys were returned at the end of the tenancy; however, the tenant stated she was not in receipt of an "evidence package" from the landlord.

I instructed the landlord's agent to describe, in detail, the documentary evidence served to the tenants with the proceeding package. The landlord's agent described three documents: a lawyer's letter dated February 19, 2021, a *Two Month Notice to End Tenancy for Landlord's Use of Property*; and, a *10 Day notice to End Tenancy for Unpaid Rent or Utilities*. None of these documents had been provided to the

Residential Tenancy Branch by the landlord. Rather, I informed the landlord's agent that the only document submitted to the Residential Tenancy Branch by the landlord was: a lawyer's letter dated October 8, 2020. The landlord's agent then changed his testimony to say the October 8, 2020 letter was also included in the evidence provided to the tenants with the proceeding package.

I instructed the tenant to describe each document served in the package she received from the landlord. The tenant described receiving the three page Notice of Dispute Resolution Proceeding; the October 8, 2020 lawyer's letter; a lawyer's letter dated February 19, 2021; and a copy of a *10 Day notice to End Tenancy for Unpaid Rent or Utilities*.

The tenant did not confirm receipt of the "Respondent Instructions" or the Dispute Resolution Fact Sheet that forms part of the proceeding package that is to be served upon a respondent.

Neither party described serving or receiving a Monetary Order worksheet or detailed calculation to show how the amount claimed by the landlord was determined.

Given the lack of service, or proof of service, of documents and/or evidence, I informed the parties that I would consider permitting the landlord to re-file so as to properly submit and serve all required documents. The landlord's agent indicated he would rather re-serve than proceed in the absence of all of the landlord's evidence. The tenant stated she had no objection to permitting the landlord to the opportunity to reapply. Accordingly, I dismissed the landlord's application with leave to reapply.

I informed the parties that an applicant has the burden to serve each respondent with an exact copy of all evidence submitted to the Residential Tenancy Branch; that evidence is to be organized; and, that an applicant bears the burden to prove service of hearing materials at a hearing and that evidence is to be organized. I suggested that in the event the landlord reapplies, the landlord ensure all evidence submitted and served is organized, including page numbers and an Index or Table of Contents where there are multiple pages.

I noted that the landlord had requested authorization to retain the tenant's security deposit; however, since the landlord's application was dismissed, I proceed to explore disposition of the security deposit. I confirmed with both parties that the landlord continues to hold the tenant's \$500.00 security deposit; the tenant had not given the landlord authorization to retain the security deposit; and, the tenancy ended and the

tenant provided a forwarding address on or about March 2, 2021. Although I have given the landlord leave to make its monetary claim against the tenant, the time limit for making a claim against the tenant's security deposit [15 days after the tenancy ends or receipt of the tenant's forwarding address] has expired. Residential Tenancy Branch Policy Guideline 17 also provides for return of the security deposit where a landlord's makes a claim against the security deposit and the claim is dismissed.

The tenant's assistant enquired about doubling of the deposit. Sections 38(1) and (6) of the Act provides for doubling of the security deposit; however, having determined the landlord made a claim for unpaid rent against the security deposit within 15 days of the tenancy ending or receiving the tenant's forwarding address, I was satisfied the landlord complied with the requirements of section 38(1) and doubling was not applicable.

In light of the above, with this decision I provide the tenants with a Monetary Order in the amount of the \$500.00, representing the single amount of the security deposit.

Conclusion

The landlord's monetary claim against the tenant is dismissed with leave to reapply.

The tenants are provided a Monetary Order in the amount of \$500.00, representing the return of the security deposit in the single amount.

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: August 10, 2021

Residential Tenancy Branch