



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for \$1,410.00 for unpaid rent, utilities and compensation under the Act, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's 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 11 minutes. The respondent tenant attended the hearing and was 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 1:41 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I monitored the teleconference line throughout the hearing and confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

At the outset of this hearing, I informed the tenant recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The tenant affirmed, under oath, that he would not record this hearing.

At the outset of this hearing, I explained the hearing process to the tenant. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

The tenant stated that he did not receive a copy of the landlord's application for dispute resolution hearing package. He said that he got an email evidence reminder from the RTB and he called the RTB to get the access code to call into the hearing.

The tenant said that his tenancy is continuing, and he still lives in the rental unit.

#### 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, except for the claim to retain the tenant's security deposit, which is dismissed with leave to reapply. As per the tenant's testimony, this tenancy is continuing and not ending. Therefore, the tenant's security deposit is to be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

#### 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 tenant's security deposit, as per Residential Tenancy Policy Guideline 17. However, since this tenancy is continuing and not ending, I cannot deal with the tenant's security deposit at this time, as per section 38 of the *Act*. This claim was dismissed with leave to reapply, as noted above.

### Conclusion

The landlord's application to retain the tenant's security deposit is dismissed with leave to reapply.

The remainder of the landlord's application is dismissed without leave to reapply.

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: October 12, 2021

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Residential Tenancy Branch