



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT**

MNDCL-S, FFL

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Act.

The tenant applied for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- A monetary order for damages or compensation pursuant to section 67.

The landlord applied for:

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The landlord's application was originally scheduled for October 28, 2021 at 1:30 p.m. At that hearing, the arbitrator determined that the landlord's Application for Dispute Resolution should have been crossed with the tenant's Application for Dispute Resolution set for today's date, October 29th as both applications dealt with a related issue, the tenant's security deposit.

Both the tenants attended today's hearing and the landlord attended the hearing with an interpreter, TT.

At the commencement of today's hearing, the tenant testified that he had not received the landlord's Notice of Dispute Resolution Proceedings. He was unaware that the landlord had filed an application.

I inquired whether the tenants had served the landlord with a formal notice of their forwarding address. The tenant FT ("tenant") testified that they had not. The tenant testified that he and BT, the co-tenant named on the tenancy agreement are brothers and the others listed on his Application for Dispute Resolution are his parents. They all reside in the same residence.

The tenant confirmed he has the landlord's address for service on the tenancy agreement and the landlord confirmed that address on the tenancy agreement is her residence.

Preliminary Issue

The tenant's issue is for a return of the security deposit, pursuant to section 38 of the Act and the landlord's issues is to retain the tenant's security deposit pursuant to section 38.

Section 38 states the following:

38 Return of security deposit and pet damage deposit

(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Both the tenant's and the landlord's applications are contingent upon the tenants providing their forwarding address to the landlord. I find that since the tenants' forwarding address has not yet been provided to the landlord, both applications are premature.

As such, I make the following orders:

1. The tenants are to serve the landlord with their forwarding address in writing within the next 7 days or within the timeframe stated in section 39 of the Act;
2. The tenants may serve the landlord with their forwarding address by registered mail, personal service, by posting to the landlord's door or any other method permitted under section 88 of the Act;
3. In accordance with section 38(1) of the Act, the landlord must, within 15 days after receiving the tenants' forwarding address in writing, either repay the tenants' forwarding address or make another application for dispute resolution claiming against the security deposit.
4. If the landlord does not comply with term 3 (above), the tenants are at liberty to make another Application for Dispute Resolution against the landlord claiming double the security deposit.

Conclusion

The landlord's application is dismissed with leave to reapply.

The tenant's application is dismissed with 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: November 01, 2021

Residential Tenancy Branch