



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 26, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent; and,
- 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.

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. During the hearing, it became apparent that both parties failed to sufficiently serve their evidence packages in accordance with the Rules and the Act, and had challenges ensuring the other party was served, prior to the hearing.

At the hearing, the Landlord requested to withdraw her application, so that she could have a chance to re-apply and serve her evidence in accordance with the Act and the Rules. The Tenants consented to this because they also wished to have another chance to provide their evidence to the Landlord in accordance with the Act and the Rules. The Tenants also consented to the Landlord being able to temporarily retain their security deposit, without penalty, so that the Landlord can re-apply against the deposit.

Although the Tenants agreed the Landlord may retain the deposits temporarily, in order to re-apply without penalty under section 38(6) of the Act, I do not find the Landlord can retain the deposit indefinitely. I order that the Landlord must re-apply to the RTB, filing a claim against the deposit, within 15 days of the date of this decision, or send the

security deposit back to the Tenants, in full, at their forwarding address. Failure to do so may be considered a breach of section 38(6) of the Act, which could entitle the Tenants to double the security deposit.

By mutual consent, I allow the Landlord to withdraw her application, in full. The Landlord is granted leave to re-apply. However, a new application will need to be filed by the Landlord, and a new hearing will be booked, likely with a different arbitrator. This also means the parties must resubmit and re-serve all evidence leading up to the next hearing, and the parties are not able to rely on evidence submitted for this application, at a future proceeding.

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 30, 2021

Residential Tenancy Branch