



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNRT, FFT

Introduction

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

- authorization to obtain a return of the tenant's security deposit of \$700.00, pursuant to section 38;
- a monetary order of \$700.00 for the cost of emergency repairs, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the tenant, and tenant's wife attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 49 minutes.

The landlord intended to call a witness, who was excluded at the outset of this hearing, and did not return to testify.

The landlord confirmed his name and spelling. He stated that he owns the rental unit. He provided an email address for me to send this decision to him after the hearing.

The tenant and his wife confirmed their names and spelling. The tenant provided an email address for me to send this decision to him after the hearing. The tenant confirmed that his wife is his English language translator and that she had permission to assist him at this hearing. The tenant confirmed that his wife would not be a witness at this hearing, only a translator.

Throughout this hearing, the landlord repeatedly complained that the tenant's wife was not translating for the tenant because he understood the language they were speaking. He claimed that the tenant's wife was answering questions instead of the tenant, that she was not translating some information, and she was not accurately translating.

I repeatedly warned the tenant's wife to only translate for the tenant, if he was unable to understand English during this hearing, not to answer instead of him, and to translate accurately.

Both parties were repeatedly cautioned for speaking at the same time as each other and arguing with each other during this hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord, the tenant, and the tenant's wife all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that he did not submit any evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the name of the landlord company and to add the name of the individual landlord as a landlord-respondent party. Both parties consented to this amendment during this hearing. The landlord confirmed that he personally owned the rental unit, not the landlord company for which he is an employee.

At the outset of this hearing, the tenant confirmed that he did not pay for any emergency repairs of \$700.00. He claimed that he was not pursuing this claim. I informed him that this portion of his application was dismissed without leave to reapply. He confirmed his understanding of same.

Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute and arising out of this tenancy, except for the application filing fee.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time and arising out of this tenancy, except for the application filing fee:

1. The landlord agreed to return the security deposit of \$700.00 to the tenant by way of a cheque to be mailed out by January 25, 2022, to the tenant's mailing address, as confirmed by both parties during this hearing;
2. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing and any issues arising out of this tenancy, except for the application filing fee;
3. Both parties agreed that they will not initiate any future claims or applications against each other at the RTB, with respect to any issues arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy, except for the application filing fee. Both parties affirmed at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute and arising out of this tenancy, except for the application filing fee.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 49-minute hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. The tenant had ample and additional time during this hearing to translate, understand, discuss, and review the settlement terms with his wife during this hearing. Both parties affirmed, under oath, that they fully understood and agreed to the above settlement terms. Both parties affirmed, under oath, that they agreed and understood that the above settlement terms were final, binding, and could not be changed after this hearing.

As the parties were unable to reach a settlement agreement regarding the \$100.00 filing fee, they asked that I make a decision about it.

The filing fee is a discretionary award usually issued to an applicant party after a full hearing is conducted and a party is successful on the merits of the application, after a decision is made by an Arbitrator. I did not conduct a full hearing or make a decision on the merits of the tenant's application. Both parties voluntarily agreed to settle this application. The tenant did not pursue his claim for the cost of emergency repairs for \$700.00 and it was dismissed without leave to reapply. For the above reasons, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

I order both parties to comply with all of the above settlement terms.

The tenant's application for emergency repairs of \$700.00 and the application filing fee of \$100.00, is dismissed without leave to reapply.

In order to implement the above settlement and as discussed with both parties during this hearing, I issue a monetary Order in the tenant's favour in the amount of \$700.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord fails to pay the tenant \$700.00 as per condition #1 of the above agreement. The landlord must be served with a copy of this Order. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: January 25, 2022

Residential Tenancy Branch