



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAPE LIVING CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on June 15, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for \$2,545.00 for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$995.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The applicant landlord did not attend this hearing, which lasted approximately 10 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 1:40 p.m. I monitored the teleconference line throughout the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

The tenant confirmed his name, spelling, and the rental unit address. He provided an email address for me to send this decision to him after the hearing.

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

I explained the hearing process to the tenant. He had an opportunity to ask questions. He stated that he was ready to proceed with the hearing. He did not make any adjournment or accommodation requests.

The tenant confirmed receipt of landlord's application for dispute resolution and notice of hearing. He said that he did not receive any documentary evidence from the landlord. I did not receive any documentary evidence from the landlord at the RTB. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and notice of hearing.

Preliminary Issue – Dismissal of Landlord's Application

Rule 7.3 of the RTB *Rules* 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.

Preliminary Issue – 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 because the landlord has applied to retain it. The landlord did not appear at this hearing to support its application to retain the security deposit and the landlord's application was dismissed without leave to reapply, as noted above.

The male tenant testified regarding the following facts. This tenancy began on January 15, 2020 and ended on May 31, 2021. Monthly rent of \$1,990.00 was payable on the first day of each month, which included \$150.00 for parking and \$50.00 for storage. A security deposit of \$995.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed with the tenant present. No move-out condition inspection report was completed with the tenant present, despite the tenant telling the landlord to call him and arrange a date and time to meet. A written forwarding address was provided by the tenant to the landlord, by way of email on May 16, 2021. The landlord provided the tenant's above forwarding address on the landlord's application filed for this hearing. The landlord did not have written permission to keep any part of the tenant's security deposit.

Over the period of this tenancy, no interest is payable on the tenant's security deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlord to return the security deposit of \$995.00 to the tenant. The tenant is provided with a monetary order for same.

I find that the tenant did not extinguish his right to the return of his security deposit. I find that the tenant is not entitled to the return of double the value of his security deposit, as the landlord filed this application on June 15, 2021, which is within 15 days of the later move-out date of May 31, 2021, to retain the security deposit.

Although the landlord did not complete a move-out condition inspection report with the tenant present, the landlord's right to retain the deposit is extinguished only for damages; however, the landlord also applied for unpaid rent in this application.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$995.00 against the landlord. The landlord must be served with this Order as soon as possible. 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 10, 2022

Residential Tenancy Branch