



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Service

Both parties agree that the tenant was served with this application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Landlord's Evidence and Withdrawal

The landlord testified that she did not serve the tenant with her evidence. In the hearing I advised the landlord that the evidence she submitted to the Residential Tenancy Branch one day prior to this hearing was inadmissible because it was not served on the tenant or the Residential Tenancy Branch in accordance with the Residential Tenancy Branch Rules of Procedure (the "*Rules*").

Section 3.14 of the *Rules* state that evidence should be served on the respondent and the Residential Tenancy Branch at least 14 days before the hearing.

I asked the landlord if the landlord wished to proceed with this application in the absence of the landlord's evidence or if the landlord wished to withdraw this application. The landlord was cautioned that a withdrawal would result in the landlord's application for dispute resolution being dismissed with leave to reapply. The landlord was cautioned that leave to reapply is not an extension of any applicable limitation periods and may affect the landlord's right to hold the tenant's security deposit under section 38 of the *Act*. I advised both parties that I was unable to provide legal advice.

The landlord took a moment to consider her options and requested that her application for dispute resolution be withdrawn. As the landlord chose to withdraw this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant. The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply. The remainder of the landlord'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: February 22, 2022

Residential Tenancy Branch