



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlords' application, filed on August 11, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$2,907.95 for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$4,000.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two applicant landlords did not attend this hearing, which lasted approximately 14 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.

This hearing began at 1:30 p.m. and ended at 1:44 p.m. I monitored the teleconference line throughout this 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 and 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*. 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, which I answered. The tenant stated that he was ready to proceed with this hearing. He did not make any adjournment or accommodation requests.

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

Preliminary Issue – Dismissal of Landlords' Application

Rule 7.3 of the RTB *Rules of Procedure* states the following:

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 landlords, I order the landlords' 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 landlords have applied to retain it. The landlords did not appear at this hearing to provide evidence regarding their application to retain the security deposit. The landlords' entire application was dismissed without leave to reapply, as noted above.

The tenant testified regarding the following facts. This tenancy began on June 1, 2019 and ended on July 31, 2021. Monthly rent of \$8,000.00 was payable until January 1, 2021, when it was reduced by the landlords to \$7,500.00, for the remainder of the tenancy. A security deposit of \$4,000.00 was paid by the tenant and the landlords continue to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenant to the landlords by way of the move-out condition inspection report, which was completed by both parties on July 31, 2021. A copy of the move-out condition inspection report was emailed by the landlords' agent to the tenant on August 3, 2021. The tenant also emailed his forwarding address to the landlords. The landlords did not have written permission to keep any amount from the tenant's security deposit.

The landlords provided a copy of the parties' original tenancy agreement, which states that the tenant was required to pay a security deposit of \$4,000.00 to the landlords. In their online RTB application details, the landlords stated that the tenant paid a security deposit of \$4,000.00 to them.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit. I find that the tenant is not entitled to the return of double the amount of his security deposit. The landlords filed this application to retain the tenant's security deposit within 15 days of the end of tenancy date and the forwarding address date, both on July 31, 2021, as per section 38 of *the Act*.

In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlords to return the security deposit of \$4,000.00 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.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$4,000.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: February 28, 2022

Residential Tenancy Branch