



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S FFL
For the tenants: MNSD-B-DR FFT

Introduction and Analysis

This hearing was convened as a result of the Applications for Dispute Resolution (applications) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order of \$1,500.00 for damages to the rental unit, site or property, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of \$1,500.00 for their return of their security deposit, pet damage deposit and the recovery of the cost of the filing fee.

The landlord, MMD (landlord) attended the teleconference hearing on February 17, 2022. The landlord was affirmed and the hearing process was explained to the landlord and an opportunity was given to ask questions about the hearing process.

The tenants did not attend the hearing. The tenants were provided with a copy of the Notice of a Dispute Resolution Hearing after filing their application dated September 9, 2021 (Notice of Hearing). The tenants, however, did not attend the hearing set for February 17, 2022 at 1:30 p.m. Pacific Time. The phone line remained open for 36 minutes and was monitored throughout this time. The only party to call into the hearing was the landlord. Following the 10-minute waiting period, **the application of the tenants was dismissed without leave to reapply**. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, which address the consequence for failing to attend a dispute resolution hearing, the hearing continued with consideration of the landlord's application only.

The landlord testified that they only served their Application for Dispute Resolution or the Notice of a Dispute Resolution Hearing (Hearing Package) via email only. Both

parties have a right to a fair hearing, and the tenants would not have been aware that the landlord made an Application for Dispute Resolution, without having been served with the landlord's Hearing Package and related evidence. Therefore, **I dismiss** the landlord's application **with leave to reapply** due to a service issue, as the landlord failed to serve the tenants with the landlord's application in a method approved under section 89 of the Act, such as registered mail. The landlord is at liberty to reapply as a result.

The landlord is not granted the filing fee due to a service issue.

As the tenant's failed to attend the hearing to present the merits of their claim towards the security deposit and pet damage deposit, I find the tenants have extinguished their rights to both deposits. I find the landlord may retain both deposits as a result of the tenants' extinguishment of both deposits. I make this finding pursuant to sections 38 and 62(3) of the Act.

Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord did not have any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, I have amended the name of the male tenant as an AKA (also known as) name to reflect the spelling on the tenancy agreement, pursuant to section 64(3)(c) of the Act.

In addition, the landlord confirmed the respective email addresses for both parties at the outset of the hearing and stated that they understood that the decision would be emailed to both parties.

Conclusion

The tenants' application has been dismissed without leave to reapply, as the tenants failed to attend the hearing to present their application.

The landlord's application has been dismissed with leave to reapply, due to a service issue.

Neither filing fee is granted.

This decision will be emailed to both parties.

The landlord may retain both deposits as the tenants' have extinguished their right to both deposits as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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