



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to retain the tenants' security deposit, pursuant to section 38.

"Tenant HCB" did not attend this hearing, which lasted approximately 21 minutes. The landlord and "tenant TB" 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 began at 1:30 p.m. and ended at 1:51 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 landlord, tenant TB, and I were the only people who called into this teleconference.

The landlord stated his name and provided an email address for me to send this decision to him after the hearing. He confirmed the rental unit address. He said that he was the previous owner of the rental unit until he sold it in July 2021.

Tenant TB provided her name, spelling, and email address for me to send this decision to her after the hearing. She confirmed that the surname indicated by the landlord in this application against her, was incorrect. She said that tenant HCB is deceased. She stated that she did not have permission to speak on behalf of tenant HCB or his estate at 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 and tenant TB both separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. I informed both parties that I could not provide legal advice to them. I notified both parties that they could speak to information officers at the RTB for information only, not legal advice. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The landlord stated that tenant HCB is deceased. He said that he did not serve or name tenant HCB's estate in this application because he did not know the process. He explained that he filed this application against tenant HCB, because he did not pay rent and tenant HCB paid the security deposit directly to the landlord. The landlord stated that tenant TB wanted the security deposit back from him, but he did not receive the deposit from her, only from tenant HCB.

Section 1 of the *Act* states the following:

"tenant" includes

(a) the estate of a deceased tenant, and

At the hearing, I notified the landlord that his entire application was dismissed with leave to reapply. I informed him that he could file a new application and pay a new filing fee if he wanted to pursue this matter in the future. I notified him that he could hire a lawyer for legal advice. He confirmed his understanding of same.

I informed the landlord that he did not name or serve tenant HCB's estate with this application, since tenant HCB is deceased. I notified him that tenant HCB's estate did not have notice of the landlord's application against tenant HCB, in order to respond to same. I informed him that section 89 of the *Act* requires a landlord to serve a tenant with an application prior to the hearing. The landlord confirmed that this application was against tenant HCB because he did not pay the rent and he was the only tenant that paid a security deposit to him, not tenant TB. Further, the landlord indicated the wrong legal surname for tenant TB in this application. Tenant TB confirmed that she did not have authority to represent tenant HCB or his estate at this hearing. The landlord confirmed his understanding of the above information.

Sections 6 and 7 of the *Act* state the following:

Enforcing rights and obligations of landlords and tenants

6(1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Tenant TB confirmed that she did not pay a security deposit to the landlord, only to tenant HCB. I informed her that the RTB deals with disputes between landlords and tenants, not between tenants. I notified her that she could hire a lawyer to obtain legal advice as to whether she has a monetary claim against tenant HCB's estate in a Court of competent jurisdiction. She confirmed her understanding of same.

Conclusion

The landlord's entire 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