



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order of \$3,625.00 for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the landlord's agent, the tenant, the tenant's agent, and the tenant's advocate 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 lasted approximately 14 minutes.

All hearing participants confirmed their names and spelling.

The landlord's agent and the tenant's advocate provided their email addresses for me to send this decision to both parties after the hearing. They identified themselves as the primary speakers at this hearing.

The landlord's agent confirmed that she was the daughter of the landlord named in this application and that she had permission to speak on his behalf. She said that the landlord had difficulty speaking English, so she would speak for him.

The tenant confirmed that his agent is his daughter and she had permission to speak on his behalf. The tenant confirmed that his advocate had permission to speak on his behalf.

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* ("Rules"). All hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

The landlord's agent stated that the landlord was pursuing a monetary claim in excess of \$3,625.00, the original amount stated in this application. She claimed that the landlord did not amend this application to increase his monetary claim. The tenant's advocate claimed that the tenant was not provided an amendment or any notice of an increased monetary claim beyond \$3,625.00.

I informed the landlord's agent that the landlord could not pursue a monetary claim beyond \$3,625.00 at this hearing, since an amendment or notice of same was not provided to the tenant or the RTB. I notified her that the landlord could only pursue the original amount of \$3,625.00 claimed in this application. The landlord's agent claimed that she may have been mistaken and she attempted to calculate the monetary claim during this hearing, without success.

The landlord provided evidence to the RTB, including account information from November 2020 to June 2021, and photographs of text messages between the parties, on February 23, 2022. The landlord's agent said that the landlord had to get access to his text messages from the cellular phone company to print them out and it took a long time. The tenant's advocate claimed that the tenant did not receive the landlord's late evidence.

I informed the landlord's agent that this evidence was submitted late to the RTB, on February 23, 2022, less than 14 days prior to this hearing, contrary to Rule 3.14 of the RTB *Rules*. I notified her that the landlord had ample time from filing this application on August 19, 2021, to submit the evidence in a timely manner prior to this hearing on March 8, 2022. I informed her that I could not consider the landlord's late evidence, since it was sent late to the RTB, and the tenant did not receive it.

I asked the landlord's agent whether the landlord wanted to proceed with this hearing on the basis of the original monetary amount of \$3,625.00 and excluding the above late evidence, or if the landlord wanted to reapply. She asked for leave to reapply. The tenant's advocate stated that the tenant did not have an objection to same.

I informed the landlord's agent that the landlord's entire application, except for the \$100.00 filing fee, was dismissed with leave to reapply. She confirmed her understanding of and agreement to same.

I informed the landlord's agent that the landlord could file a new application and pay a new filing fee, if the landlord wanted to pursue this matter in the future. She confirmed her understanding of and agreement to same.

Conclusion

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: March 08, 2022

Residential Tenancy Branch