



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDCL-S**

Introduction

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

- a monetary order for damages and pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants and their advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenants confirmed receipt of the landlord's application and evidence. The tenants testified that they served the landlord with their evidence by registered mail sent on April 6, 2022 and provided a valid Canada Post tracking receipt as evidence of service. Based on the undisputed evidence I find the tenants duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act* and the landlord deemed served with the tenants' evidence on April 11, 2022, five days after mailing, in accordance with sections 88 and 90 of the *Act*.

During the hearing the tenants noted errors in their names on the application for dispute resolution and provided the corrected spelling of their names. The corrected names of the parties are used in the style of cause for this decision and accompanying order.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenants provided undisputed evidence on the following facts. This tenancy began on July 1, 2020 and ended on September 1, 2021 in accordance with the tenants' notice pursuant to section 50(1) of the Act after being served a 2 Month Notice to End Tenancy for Landlord's Use dated July 7, 2021. The tenants provided a forwarding address in writing to the landlord on September 1, 2021.

Rent was \$2,300.00 per month, payable on the first day of each month. The landlord collected a security deposit of \$1,150.00 and pet damage deposit of the same amount at the start of the tenancy which they still hold. No condition inspection report was prepared at any time for this tenancy.

The tenants have not given written authorization to the landlord that they may retain any portion of the deposit for this tenancy.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently, I dismiss the landlord's application in its entirety without leave to reapply.

Residential Tenancy Policy Guideline 17 provides in part that:

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.

Section 24 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not complete a copy of a condition inspection report in accordance with the regulations.

I accept the undisputed evidence that no condition inspection report was prepared for this tenancy. In the absence of a proper condition inspection report prepared by the parties in accordance with the *Act* I find the landlord has extinguished their right to retain the security and pet damage deposit for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If they fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit.

I accept the evidence that the tenants provided their forwarding address on September 1, 2021, the date the tenancy ended. I accept the evidence that the landlord has failed to return the security and pet damage deposit in full and the tenants have not given written authorization that the landlord may retain any portion of the deposits. Therefore, I find the tenants are entitled to a monetary award in the amount of \$4,600.00, double the value of the security and pet damage deposit for this tenancy.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$4,600.00, representing a return of double the security and pet damage deposit. The landlord must be served with this Order as soon as possible. Should the landlord 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: April 19, 2022

Residential Tenancy Branch