



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the respondent.

Rule 7.3 of the Rules of Procedure provides as follows:

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 reapply.

Accordingly, the dispute resolution hearing was conducted in the absence of the landlord.

The tenant was given an opportunity to give sworn testimony, make submissions and call witnesses.

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, 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 tenant gave undisputed testimony regarding the following facts. This tenancy began on July 1, 2021. The monthly rent was \$1,641.60 payable on the first of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the landlord. The tenancy ended on December 7, 2021 with the tenant providing a forwarding address in writing on that date. The tenant has not authorized the landlord to withhold any portion of the security deposit.

Analysis

Pursuant to Rule 6.6 the onus to establish their claim on a balance of probabilities lies with the applicant. In the absence of the applicant and their failure to present evidence as required under Rule 7.4 I find the landlord has not met their evidentiary onus and accordingly dismiss the application in its entirety without leave to reapply.

Policy Guideline 17 provides 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.

In the present case while the tenant has not applied for dispute resolution for the return of the deposit the landlord has filed an application to retain the security deposit for this tenancy.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the evidence before me is that the tenant provided their forwarding address on the last date of the tenancy, December 7, 2021 and the landlord filed their application on December 16, 2021. Therefore, I find the landlord was within the statutory timeline to file their application.

I have dismissed the landlord's application and find that the tenant is entitled to a return of the security deposit in the amount of \$800.00 pursuant to Policy Guideline 17 and section 38 of the *Act*. Accordingly, I issue a monetary award in the tenant's favour in that amount.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$800.00, representing the full return of the security deposit for this tenancy. 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: July 21, 2022

Residential Tenancy Branch