



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) P. Realty Inc.	310060131	MNRL-S
(Tenant) M.R.	310060990	MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- \$675.00 in recovery of unpaid rent – holding the security deposit for this claim.

The Tenant filed claims for:

- the return of her \$675.00 security deposit; and
- recovery of her \$100.00 application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing, the Tenant was given the opportunity to provide

her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on February 9, 2022. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Further, the Landlord was provided with a copy of their Notice of a Dispute Resolution Hearing on January 26, 2022; however, the Landlord did not attend the teleconference hearing scheduled for August 25, 2022, at 1:30 p.m. (Pacific Time). The phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Tenant and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on August 25, 2022, as scheduled.

Rule 7.3 states 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 reapply. The teleconference line remained open for minutes, however, neither the Landlord nor an agent acting on its behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Landlord’s Application without leave to reapply.**

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and the Tenant confirmed hers in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Tenant that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of her \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the fixed-term tenancy began on March 15, 2021, and was to run to September 30, 2022, with a monthly rent of \$1,350.00, due on the first day of each month. The Tenant confirmed that she paid the Landlord a security deposit of \$675.00, and no pet damage deposit. The Tenant said she moved out of the residential property on December 30, 2021. She also said she provided the Landlord with her forwarding address in the move-out condition inspection report on December 30, 2021.

The Tenant that the Landlord failed to return her \$675.00 security deposit, and that she would like it returned as soon as possible. No one attended on the Landlord's behalf to explain why they had not returned the security deposit pursuant to the Act.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenant provided her forwarding address to the Landlord on December 30, 2021, on the condition inspection report, and that the tenancy ended on December 30, 2021. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

- 38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the Tenant's \$675.00 security deposit within fifteen days of December 30, 2021, namely by January 14, 2022, or to apply for dispute resolution to claim against the security deposit by January 14, 2022, pursuant to section 38 (1). There is no evidence before me that the Landlord returned of the security deposit; however, they applied for dispute resolution, claiming against the security deposit on January 14, 2022. Therefore, I find the Landlord complied with their obligations under section 38 (1).

However, as the Landlord did not attend the hearing to explain their version of events, I **award the Tenant** with the return of her **\$675.00 security deposit** from the Landlord, pursuant to sections 38 and 67 of the Act.

Given that the Tenant was successful in her application, I also award her recovery of the **\$100.00** Application filing fee for a total award of \$775.00. I grant the Tenant a **Monetary Order** from the Landlord of **\$775.00** pursuant to section 67 of the Act.

Conclusion

The Tenant's claim against the Landlord for return of the security deposit is successful in the amount of **\$675.00**. The Landlord did not return the Tenant's security deposit or attend the hearing to indicate why I should allow them to retain the security deposit. The Landlord's application is dismissed without leave to reapply.

Given her success in her application, I also award the Tenant with recovery of her **\$100.00** Application filing fee for this proceeding, pursuant to section 72 of the Act. I grant the Tenant a **Monetary Order** under section 67 of the Act from the Landlord in the amount of **\$775.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: August 29, 2022

Residential Tenancy Branch