



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS -DR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“Act”) for:

The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenants applied for:

- authorization to obtain a return double their security deposit for failure for the landlord to comply with section 38 of the *Act*.

The applicant tenants did not attend this hearing, which lasted approximately 15 minutes. The respondent landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant’s application.

Preliminary Issue #1 – Service of the Landlords' application

The landlord testified that he filed his application on January 17, 2022. The landlord testified that he served the tenants his application by email on July 26, 2022. The landlord did not provide a copy of the email to confirm that he had served the tenants, nor did he provide sufficient documentation to show that an email was an agreed upon means of service between the parties. As the landlord has not provided sufficient evidence to show that the tenants have been served his application, I hereby dismiss the landlord's application with leave to reapply. The landlords request to recover the filing fee for his application is dismissed without leave to reapply.

Preliminary Issue #2 – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states:

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 re-apply.

In the absence of any appearance by the tenants, I order the tenants entire application dismissed without leave to reapply.

Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

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.

As per the above, I am required to deal with the security deposit because the tenants have applied to obtain a return of it, even though the tenants have not appeared at this hearing.

The tenants did not appear at this hearing to support their application to obtain a return of their security deposit and their application is dismissed without leave to reapply.

The landlord confirmed that he obtained a security deposit of \$875.00 from the tenants and that he continues to retain this deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the landlord is entitled to retain the tenants entire security deposit of \$875.00.

Conclusion

The tenants entire application is dismissed without leave to reapply.

I order the landlord to retain the tenants entire security deposit of \$875.00.

The landlord's application is dismissed with leave to reapply. The landlords request for the recovery of the filing fee is dismissed without 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: August 16, 2022

Residential Tenancy Branch