



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310068646: MNRL-S, FFL
File #310070034: MNSDS-DR, FFT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 38 and 67 for unpaid rent by claiming against the security deposit; and
- return of their filing fee pursuant to s. 72.

The Tenant files her own application seeking the following relief under the *Act*:

- return of her security deposit pursuant to s. 38; and
- return of her filing fee pursuant to s. 72.

The Tenant’s application was filed as a direct request but was scheduled for a participatory hearing in light of the Landlord’s application.

T.W. appeared as the Tenant. The Landlord did not attend, nor did someone attend on the Landlord’s behalf.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served the Landlord with a copy of her Notice of Dispute Resolution and her evidence by way of registered mail sent on May 12, 2022. The Tenant provided a tracking receipt of the registered mail sent on that date as proof of

service. I find that the Landlord was served with the Tenant's application materials in accordance with s. 89 of the *Act* by way of registered mail sent on May 12, 2022. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant's application materials on May 17, 2022.

The Tenant acknowledged receipt of the Landlord's Notice of Dispute Resolution.

Preliminary Issue – Landlord's Non-Attendance

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution at 1:30 PM on December 12, 2022. I confirmed that the correct dial-in numbers and codes were provided within the Notice of Dispute Resolution.

Rule 7.3 of the 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.

As the Landlord did not attend the hearing, it was conducted in their absence. After waiting on the line with the Tenant for 10 minutes, the hearing was concluded without submissions on the substantive issues in the Landlord's application.

As is made clear by Rule 6.6 of the Rules of Procedure, the onus is on the applicant Landlord to prove their claim on a balance of probabilities. By failing to attend the hearing to make submissions in support of their application, I find that the Landlord has failed to prove their claim. I hereby dismiss the application without leave to reapply in its entirety.

The hearing proceeded strictly on the Tenant's application.

Issues to be Decided

- 1) Is the Tenant entitled to the return of her security deposit?
- 2) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The Tenant confirmed the following details with respect to her tenancy:

- She moved into the rental unit on June 1, 2021.
- She moved out of the rental unit on March 31, 2022.
- Rent of \$1,150.00 was due on the first day of each month.
- She paid a security deposit of \$575.00 to the Landlord.

A copy of the tenancy agreement was provided to me by the Tenant confirming these details.

The Tenant testified that no written move-in inspection was ever conducted and that no move-out inspection had been conducted either. The Tenant testified that she provided the Landlord with a copy of her forwarding address on April 6, 2022 by way of email. I have been provided with a copy of that email by the Tenant.

The Tenant confirmed the Landlord retained the security deposit in full at the end of the tenancy.

Analysis

The Tenant seeks the return of her security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

I accept the Tenant's undisputed evidence that the tenancy ended on March 31, 2022. I further accept, as evidenced in the email provided, that she provided her forwarding address to the Landlord on April 6, 2022. Accordingly, the Landlord had until April 21, 2022 to claim against the security deposit.

I note that the Landlord failed to prepare a move-in condition inspection report in contravention of their obligation to do so under s. 23(4) of the *Act*, which extinguished their right to claim against the security deposit for damages to the rental unit under s. 24(2). However, as noted in Policy Guideline #17, which provides guidance with respect to security deposits and set-offs, the Landlord's extinguished right did not extinguish their right to advance another claim against the security deposit:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
 - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
 - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

In this instance, the Landlord did file an application claiming against the security deposit for unpaid rent. Upon review of the information on the Landlord's file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed his application on April 7, 2022. Accordingly, I find that the Landlord filed his application within the 15-day window imposed by s. 38(1) such that the doubling provision under s. 38(6) does not apply.

As noted above, the Landlord's right was extinguished by failing to prepare a move-in inspection, which happened first. The Tenant's right to claim for the return of the security deposit has not been extinguished by ss. 24 or 35 of the *Act*. I accept that the Landlord has retained the security deposit in full such that the Tenant is entitled to its return.

Conclusion

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

The Tenant is entitled to the full return of her security deposit. Pursuant to ss. 38 and 67 of the *Act*, I order that the Landlord pay \$575.00 to the Tenant for the return of the security deposit.

The Tenant was successful in her application. I find she is entitled to the return of her filing fee. Pursuant to s. 72 of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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: December 12, 2022

Residential Tenancy Branch