



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNRL-S, MNDL-S, FFL; MNSD, FFT

Introduction

Both hearings dealt with the landlord's application, filed on January 13, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$2,187.00 for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$525.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for its application, pursuant to section 72.

Both hearings also dealt with the tenant's application, filed on January 18, 2022, pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the security deposit of \$525.00, totalling \$1,050.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

The first hearing on August 23, 2022, lasted approximately 74 minutes from 1:30 p.m. to 2:44 p.m. The landlord intended to call one witness, who was excluded from the outset of the first hearing in a separate room. The witness did not attend the first hearing or testify.

The second hearing on January 9, 2023, lasted approximately 64 minutes from 9:30 a.m. to 10:34 a.m. The landlord called one witness, who was excluded from the outset of the second hearing in a separate room. The witness testified from 9:41 a.m. to 9:57 a.m., was excluded from the remainder of the hearing, and did not hear testimony from either party or their settlement discussions.

The landlord's two agents, "landlord LR" and "landlord RM," the tenant, and the tenant's advocate attended both hearings. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, all hearing participants confirmed their names and spelling. At both hearings, landlord LR and the tenant provided their email addresses for me to send copies of this decision to both parties after both hearings.

At both hearings, landlord LR provided the legal name of the landlord company ("landlord") named in both applications. At both hearings, she stated that the landlord owns the rental unit, and she provided the rental unit address. At both hearings, she said that she was the tenant relations representative, employed by the landlord, and she had permission to speak on its behalf. At both hearings, she identified herself as the primary speaker for the landlord at both hearings, and landlord RM agreed to same.

At both hearings, landlord RM stated that he is the director of property management, employed by the landlord. At the first hearing, he said that he had signing authority for the landlord. At both hearings, he confirmed that he had permission to speak on the landlord's behalf. At the first hearing, he confirmed that landlord LR had permission to represent the landlord.

At both hearings, the tenant confirmed that her advocate had permission to speak on her behalf. At both hearings, she asked for her advocate to be the primary speaker for the tenant, and he agreed to same.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of both hearings, all hearing participants separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, I informed both parties that I could not provide legal advice to them. At the first hearing, I informed both parties that I could not act as their agent or advocate. At the first hearing, I notified them that my role as an Arbitrator was to make a decision and/or enforce a settlement regarding both applications. At both hearings, they had an opportunity to ask questions, which I answered. At both hearings, neither party made any adjournment or accommodation requests.

At the first hearing, both parties affirmed that they were ready to proceed, they wanted me to make a decision regarding both applications, and they did not want to settle both applications. At the first hearing, both parties were given multiple opportunities to settle at the beginning and end of that hearing and declined to do so.

At the first hearing, I informed both parties that, as the applicants, they were required to prove their claims on a balance of probabilities, as per the *Act*, *Residential Tenancy Regulation* (“*Regulation*”), Residential Tenancy Policy Guidelines, and *Rules*. At both hearings, I cautioned both parties that if I dismissed their applications without leave to reapply, they may receive \$0 and/or owe money to the other party. At the first hearing, both parties affirmed that they were prepared for the above consequences if that was my decision.

Preliminary Issue – First Hearing and Service of Documents

At the second hearing, both parties confirmed receipt of my interim decision. In my interim decision, and as informed to both parties during the second hearing, I noted the following:

This hearing did not conclude after 74 minutes and was adjourned for a continuation. Both parties confirmed that they completed their submissions and evidence regarding the tenant’s application. The landlord’s two agents confirmed that they completed their submissions and evidence regarding the landlord’s application, except for testimony from their one witness.

I informed both parties that the reconvened hearing is only to hear the testimony from the landlord’s one witness and to hear response submissions from the tenant, regarding the landlord’s application only. Both parties confirmed their understanding of same.

I informed both parties of the following information during this hearing. Both parties are directed not to serve any further evidence regarding both applications, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing, except for the landlord’s one witness, identified at this hearing. Neither party is permitted to file any new applications after this hearing date of August 23, 2022, to be joined and heard together with both parties’ applications, at the reconvened hearing. Both parties confirmed their understanding of same.

Both parties agreed with the above information during the second hearing.

At the first hearing and in my interim decision, I noted the following. Landlord LR confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant's advocate confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's application.

At the first hearing and in my interim decision, I stated the following. The tenant affirmed that she served evidence to the landlord less than 14 days prior to this hearing date. This is contrary to Rule 3.14 of the *Rules*. The tenant said that she had medical and technical issues that prevented her from providing her evidence to the landlord in a timely manner. Landlord LR confirmed that she did not object to me considering the tenant's evidence, despite the fact that the landlord received it late.

At the first hearing and in my interim decision, I noted the following. Landlord LR confirmed that the landlord was only seeking a monetary order of \$1,107.00 for damages against the tenant. She said that the landlord was seeking \$582.00 and to retain the tenant's security deposit of \$525.00, for a total of \$1,107.00. She stated that the tenant paid the landlord for unpaid rent and parking charges, so the landlord was no longer seeking these costs from the tenant. In its application, the landlord indicated that rent of \$1,050.00 and parking of \$30.00 was payable, for a total of \$1,080.00.

At the first hearing and in my interim decision, I stated the following. Pursuant to section 64(3)(c) of the *Act*, I amended the landlord's application to reduce its monetary claim from \$2,187.00 to \$1,107.00 plus the \$100.00 filing fee. Neither the tenant, nor her advocate objected to the above during the first hearing. I find no prejudice to either party in making this amendment, as it is a reduction, rather than an increase in the landlord's monetary amount.

Settlement Terms

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the second hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute and arising out of this tenancy.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time and arising out of this tenancy:

1. Both parties agreed that the landlord will retain the tenant's entire security deposit of \$525.00;
2. The tenant agreed to pay the landlord \$250.00 total, according to the following terms:
 - a. \$25.00 per month, for a period of 10 months, starting on February 1, 2023 and ending on November 1, 2023;
 - b. Payments will be made by the first day of each month;
3. Both parties agreed to bear their own costs for the \$100.00 filing fees paid for both applications;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both applications and any issues arising out of this tenancy;
5. Both parties agreed that they will not initiate any future claims or applications against each other at the RTB, with respect to any issues arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties affirmed at the second hearing, that they understood and agreed to the above terms, free of any duress or coercion. Both parties affirmed at the second hearing, that they understood and agreed that the above terms are legal, final, binding, and enforceable, which settle all aspects of this dispute and arising out of this tenancy.

The terms and consequences of the above settlement were reviewed in detail, with both parties during the 64-minute second hearing. Both parties had an opportunity to think about, discuss, ask questions, and negotiate the settlement terms in detail, during the second hearing. The landlord's two agents and the tenant and her advocate were provided with ample and additional time during the second hearing to speak privately with each other to think about and discuss the settlement terms.

Conclusion

I order both parties to comply with all of the above settlement terms.

I order the landlord to retain the tenant's entire security deposit of \$525.00.

In order to implement the above settlement and as discussed with both parties during this hearing, I issue a monetary Order in the landlord's favour in the amount of \$250.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant fails to pay the landlord \$250.00 as per condition #2 of the above

agreement. The tenant must be served with a copy of this Order. Should the tenant 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.

Both parties must bear their own costs for the \$100.00 filing fees paid for both applications.

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: January 9, 2023

Residential Tenancy Branch