



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD**

Introduction

This hearing dealt with an application pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act

Applicant LD appeared with witnesses TC and TS. Respondent JS appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the applicant entitled to an order for return of the security deposit?
2. Is the applicant entitled to a monetary order for compensation?

Background and Evidence

The tenancy commenced on May 1, 2022 on a month to month basis. Rent was \$1,200.00 per month due on the first of the month. The respondent holds a security deposit of \$600.00 in trust. The tenancy ended October 31, 2022.

The applicant stated that the tenant of the subject rental unit was her son who is now deceased. She stated that she is acting as the executor of her son's estate. She does not have a will, or any documentation stating that she is the executor of her son's estate. She stated that she has provided her forwarding address to the respondent.

The respondent stated that he is not satisfied that the applicant is the executor. He stated that he requires proof that the applicant or someone else is the executor to then deal with the security deposit, which he has not received. He stated that he is intending to make a claim against the security deposit once he receives proof of executor status and their forwarding address.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The applicant therefore has the onus to establish that she is lawfully entitled to make a claim for the security deposit. The only evidence provided by the applicant was a verbal assurance in the hearing that she is the executor of the estate. RTB Policy Guideline 43 states:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate should be named. If the deceased is a respondent to an Application for Dispute Resolution, the personal representative should be served.

The personal representative may be the person named as executor in the deceased's will or the person who has been approved by the court to administer the estate by way of an estate grant.

The applicant did not provide a will or evidence of a court appointment to giving her authority to act on behalf of the estate. Therefore, I find that the applicant has not established that she has the lawful authority to make a claim for the return of the security deposit. The applicant's claim is dismissed with leave to reapply.

Conclusion

The applicant's claim for dispute resolution is dismissed.

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: May 25, 2023

Residential Tenancy Branch