



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL
Tenant: MNSDS-DR, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord and an agent for the tenant (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Amendment

In the hearing the landlord provided the correct spelling of their name. The tenant's application for dispute resolution spelt the landlord's first name incorrectly. In the hearing, according to section 64 of the *Act*, I amended the tenant's application for dispute resolution to correctly state the landlord's first name. No objections to the amendment were made in the hearing.

Preliminary Issue- Withdrawal

The landlord did not upload any evidence for consideration in this application for dispute resolution. The landlord testified that their evidence was uploaded in a previous dispute resolution application between the parties. The landlord was under the misapprehension that evidence provided for a previous dispute resolution application could be relied upon and accessed for the current dispute.

I informed the landlord that they could either continue with their application for dispute resolution without any evidence, or they could withdraw their application with leave to reapply. The landlord elected to withdraw their application for dispute resolution. I dismiss the landlord's application for dispute resolution with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

Preliminary Issue- Service

Both parties agree that the tenant served the landlord with their application for dispute resolution and evidence on February 6, 2023 via email. The landlord confirmed receipt. I find that the landlord was sufficiently served, for the purposes of section 71 of the *Act* with the above documents because receipt was confirmed.

Both parties agree that the tenant also served the landlord with this application for dispute resolution and evidence via registered mail. I find that the landlord was served in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the tenant and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on November 1, 2018
- Monthly rent in the amount of \$2,475.00 was payable on the first day of each month,
- a security deposit of \$1,220.00 was paid by the tenant to the landlord.

The tenant testified that they vacated the rental unit on March 31, 2022. The landlord testified that the tenant did not return the rental unit keys until April 8, 2022.

Both parties agree that they had a previous Residential Tenancy Branch hearing on November 8, 2022. The file number for the previous dispute is on the cover page of this decision. The tenant entered the previous decision dated November 9, 2022 (the "previous decision") into evidence. The previous decision states:

... Therefore, I find that the date of the hearing, November 8, 2022, is the date the landlord has received the written forwarding address of the tenant.

The landlord filed for authorization to retain the tenant's security deposit on October 24, 2022.

Analysis

Section 38(1) of the *Act* states that 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.

As stated in the previous decision, the landlord received the tenant's forwarding address on November 8, 2023. The landlord made an application for dispute resolution claiming against the security deposit on October 24, 2022, before the landlord received the forwarding address. I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

Since the landlord received the tenant's forwarding address on November 8, 2022 and has not today received authorization to retain the tenant's security deposit, I find that the tenant is entitled to the return of the security deposit in the amount of \$1,220.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,320.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: July 31, 2023

Residential Tenancy Branch