



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding NACEL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, FFT, MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed or damages under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for money owed or damages under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:10 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

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 participate in this hearing to present their claim, I hereby dismiss their application in its entirety without leave to reapply.

The tenant provided evidence that on July 13, 2023 he personally served the landlord copies of the Application for Dispute Resolution hearing package ('Application'). In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenants application and evidence.

Preliminary Issue – Tenants Application

At the outset of the hearing the tenant advised that he moved out on July 13, 2023 and has returned the keys and possession of the unit to the landlord, accordingly; I dismiss the portion of the tenants claim to cancel the notice to end tenancy without leave to reapply.

The tenant also advised that he wished to add onto this application, consideration for the return of his deposit. He filed his application on July 7, 2023 but moved out six days later. I advised the tenant that he was given a priority hearing date to address his housing. It was explained to the tenant that as he had not applied for the deposit and did not have sufficient evidence to meet the obligations of the tenant under section 38 of the *Act* before me, I could not consider it at this time but the tenant is at liberty to file a separate application seeking the return of his deposit if he and the landlord are unable to come to an agreement. The tenant indicated that he understood and was appreciative of me taking the time to explain it to him.

As the tenant was not successful in his application, I hereby dismiss his request to recover the filing fee.

Conclusion

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

The tenant's application is dismissed in its entirety 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 24, 2023

Residential Tenancy Branch