



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF (Landlord's Application)
 MNSD, MNDC (Tenant's Application)

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on November 17, 2016 and by the Landlord on December 19, 2016.

The Tenant applied for double the return of his security deposit. The Landlord applied for damages to the rental unit and to recover the filing fee.

Both parties appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. The hearing process was explained to the parties and no questions were asked of how the proceedings would be conducted.

The Landlord confirmed receipt of the Tenant's Application which was served by express post on December 16, 2016. However, the Landlord requested that as the Tenant had not served him with the actual Notice of Hearing document in the Hearing Package and that it had been served late, it should be dismissed.

The Tenant testified that he had served the Notice of Hearing document to the Landlord and that he served his Application late because he was still in the process of gathering evidence.

I informed the parties in the hearing that I would not be dismissing the Tenant's Application as requested by the Landlord because the Landlord failed to disclose how he was prejudiced or disadvantaged by being served late with the Tenant's Application and without the Notice of Hearing document. While I accept that the Tenant failed to serve his Application within the three day time limit provided for by the *Residential Tenancy Act* (the "Act"), the Landlord still had several months to respond to it. The Landlord also filed a cross Application and therefore, the Notice of Hearing document was identical to the one issued to the Tenant to serve to the Landlord. The Landlord

appeared for the hearing and therefore, I find no prejudice was caused by the Landlord's allegation that he did not get the Notice of Hearing documents which details the date, time, and call in details for this hearing.

The Tenant confirmed receipt of the Landlord's Application and an evidence package comprising of 20 pages of documentary and photographic evidence.

During the hearing, the Landlord stated that it was a clerical error on his Application that he had not elected to keep the Tenant's security deposit in lieu of his claim for damage to the rental unit of \$450.00 as disclosed by a Monetary Order Worksheet attached to the Application. Therefore, I allowed the Landlord to amend his Application to include a request to keep the Tenant's security deposit pursuant to my authority under Section 64(3) (c) of the Act.

The Landlord had also provided an evidence package on May 9, 2017 which sought to increase the monetary claim for additional damages. The Landlord was informed that a monetary claim cannot be amended through the service of documentary evidence and that a party must follow the procedure outlined in Rule 4 of the Residential Tenancy Branch Rules of Procedure. Therefore, I informed the Landlord that I would only be able to hear the Landlord's monetary claim of \$450.00, but that he was at liberty to re-apply for the additional amount of damages to the rental unit that he was seeking from the Tenant.

The parties agreed that the Tenant had provided the Landlord with a security deposit at the start of the tenancy in the amount of \$850.00 which the Landlord still retained. The Landlord also confirmed receipt of the Tenant's forwarding address by mail on August 8, 2016 and again on September 23, 2016. The tenancy ended on March 28, 2016 and the Landlord did not file his Application until December 19, 2016.

As a result, I explained to both parties the provisions of Section 38(1) and 38(6) of the Act which explains that if the landlord fails to deal properly with the Tenant's security deposit at the end of a tenancy, the tenant is entitled to double the amount of the security deposit paid. The Landlord made a number of submissions with regards to his claim for alleged damages to the rental unit by the Tenant during the hearing.

Section 63 of the Act, allows an 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 or an order.

As a result, I offered the parties an opportunity to settle this matter by mutual agreement so that the matters could all be resolved in this hearing. The parties considered this voluntary form of resolution, turned their minds to compromise, and decided to settle the matters by way of a settlement agreement.

Settlement Agreement

The Landlord agreed to return the Tenant's security deposit of **\$850.00** in full and final satisfaction of both parties' Applications. The amount is to be returned and received by the Tenant on or before May 31, 2017.

The Tenant is issued with a Monetary Order for this amount which is enforceable in the Small Claims Division of the Provincial Court if the Landlord fails to make payment in accordance with this agreement. The Landlord is cautioned to retain documentary evidence of the payment made to Tenant to meet the above terms and conditions.

The agreement was confirmed with the parties at the conclusion of the hearing and both parties confirmed their understanding to move forward with this resolution.

This agreement and order is fully binding on the parties and is in **full and final satisfaction of all the issues** associated with the tenancy. Therefore, no further Applications are permitted. Both files are now closed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 18, 2017

Residential Tenancy Branch