



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlord did not attend. The tenant attended the hearing via conference call and provided affirmed testimony. No documentary evidence was submitted by the tenant. The tenant confirmed that he was served with the landlord's notice of hearing package and submitted documentary evidence and that the landlord was served with the tenant's notice of hearing package via Canada Post on June 23, 2017 via next day service. I accept the undisputed affirmed testimony of the tenant and find that the landlord was properly served with the tenant's notice of hearing package via Canada Post on June 23, 2017 and find that the landlord was properly served as per sections 88 89 of the *Act*.

Preliminary Issue

After waiting 24 minutes past the start of the scheduled hearing time the hearing to allow both parties to attend and present their applications, the hearing concluded.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions and the landlord's participation in this hearing, I order the landlord's application dismissed without leave to reapply as the tenant has attended in response. I make no findings on the merits of the landlord's application. The hearing proceeded on the tenant's application for dispute.

The tenant has also provided a new mailing address as he since moved at the beginning of September 2017 since filing this application. As such, the tenant's new mailing address shall be amended within the Residential Tenancy Branch File.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenant seeks a monetary claim of \$1,300.00 for:

\$600.00	Return of Original Security Deposit
\$600.00	Compensation for Failing to Comply to Sec. 38
\$100.00	Recovery of Filing Fee

The tenant provided undisputed affirmed testimony that this tenancy began on September 1, 2016 on a month-to-month basis. The monthly rent was \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 was paid on September 1, 2014 and carried over to the current tenancy. The tenant stated that the tenancy ended on April 30, 2017 and that the landlord was provided his forwarding address in writing via text message on May 10, 2017.

Although sought, the tenant failed to include in his application the request for recovery of the filing fee or any details that would indicate that he was seeking recovery of the filing fee. As such, it was explained to the tenant that recovery of the application fee could not be considered as part of this hearing.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

However, based upon the undisputed direct testimony of the tenant the forwarding address in writing was provided to the landlord via text message on May 10, 2017 as opposed to in writing after the tenancy ended on April 30, 2017. I find as such that the tenant pre-maturely filed his application for dispute as it cannot be said that the tenant provided his forwarding address in writing for the return of the security deposit.

Conclusion

The tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: September 27, 2017

Residential Tenancy Branch