



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL; MNSDS-DR, FFT

Introduction

This hearing dealt with the landlord's application, filed on November 17, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent of \$400.00, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$400.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the tenant's application, filed on December 2, 2021, pursuant to the *Act* for:

- authorization to obtain a return of the security deposit of \$400.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee for his application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 25 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The hearing began at 1:30 p.m. with only me present. The tenant called in late at 1:33 p.m. The hearing ended at 1:55 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in both Notices of Hearings for both parties' applications. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the tenant affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the tenant. He had an opportunity to ask questions. He confirmed that he was ready to proceed with this hearing. He did not make any adjournment or accommodation requests.

The tenant stated that he served the landlord with the tenant’s application for dispute resolution hearing package on December 14, 2021, by way of regular mail. The tenant confirmed that he did not ask for a signature or registered mail. Serving an application by regular mail is not permitted by section 89 of the *Act*. Accordingly, I find that the landlord was not properly served with the tenant’s application. Therefore, I find that the tenant’s application to recover the \$100.00 filing fee is dismissed without leave to reapply.

Preliminary Issue – Dismissal of Landlord’s Application

The tenant confirmed that he did not receive a copy of the landlord’s application for dispute resolution hearing package.

Rule 7.3 of the RTB *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.

In the absence of any appearance by the landlord, I order the landlord’s entire application dismissed without leave to reapply.

Preliminary Issue – Residential Tenancy Policy Guideline 17

Residential Tenancy Policy Guideline 17 states the following, in part (emphasis added):

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- **a landlord's application to retain all or part of the security deposit;**
or
- *a tenant's application for the return of the deposit.*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. **The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.***

As per the above, I am required to deal with the tenant's security deposit because the landlord has applied to retain it, even though the landlord has not appeared at this hearing and the tenant could not prove proper service of his application to the landlord.

Issue to be Decided

Is the tenant entitled to a return of his security deposit?

Background and Evidence

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

The tenant testified regarding the following facts. This tenancy began on September 15, 2021 and ended on October 31, 2021. Monthly rent in the amount of \$795.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit in full. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The tenant provided a written forwarding address to the landlord on November 2, 2021, by way of a letter that the tenant personally gave to the landlord. The landlord did not have written permission to keep any amount from the tenant's security deposit.

The tenant stated the following facts. He is not sure of the landlord's legal name because the landlord uses other names too. There was no written tenancy agreement, only a verbal agreement. The landlord and the tenant did not live at the same rental property. The landlord and the tenant developed a tenancy relationship, since the tenant paid rent and a security deposit to the landlord.

Analysis

Jurisdiction

I find that I have jurisdiction to deal with both parties' applications because a tenancy relationship was created between the landlord and the tenant.

When the landlord filed his application for dispute resolution at the RTB, he included online dispute details and provided evidence. The landlord's online RTB dispute details indicate the following information: that he is the landlord-applicant party; the landlord's full legal name is the same name and spelling as the tenant indicated in his application; the tenant is a tenant-respondent party; the tenant paid rent of \$800.00 and a security deposit of \$400.00 to the landlord; and this tenancy began on September 15, 2021 and ended on November 1, 2021.

Based on the undisputed evidence of both parties, I find that both parties had a verbal tenancy agreement, they did not live together at the same rental property, and the tenant paid rent and a security deposit to the landlord. I find that the landlord rented the rental unit to the tenant for a residential tenancy. I find that both parties included the same name for the landlord, which I accept is the landlord's legal name.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant. The tenancy ended on October 31, 2021. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit to the tenant. The tenant provided a written forwarding address to the

landlord on November 2, 2021, by way of a letter personally handed to the landlord. The landlord filed his application to retain the tenant's deposit on November 17, 2021.

Although the landlord did not complete a move-out condition inspection or report, I find that the landlord's right to claim against the security deposit was not extinguished for a loss of rent, which is what he applied for in his application, as extinguishment only applies to claims for damages. I find that the landlord filed his application to retain the deposit on November 17, 2021, which is within 15 days of the forwarding address being provided by the tenant to the landlord on November 2, 2021.

Over the period of this tenancy, no interest is payable on the tenant's security deposit. I find that the tenant is only entitled to receive the original amount of his security deposit, totalling \$400.00, from the landlord. I find that the tenant is not entitled to the return of double his deposit.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant's application to recover the \$100.00 paid for his application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of \$400.00 against the landlord. The tenant is provided with a monetary 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: June 20, 2022

Residential Tenancy Branch