



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order to retain the security deposit and recover the filing fee. Both parties were adequately represented at the hearing and had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

1. Whether the landlord has established that the tenant owes the landlord under the Act, Regulations or tenancy agreement, and if so, the amount to be retained from the security deposit.
2. Award of the filing fee.

Background and Evidence

Upon consideration of the evidence before me, I make the following findings concerning the tenancy. The tenancy commenced April 1, 2007 and ended August 31, 2008 when the tenant vacated the rental unit. The tenant had paid a \$350.00 security deposit at the commencement of the tenancy and a \$25.00 deposit for a Smartcard. The Smartcard was returned to the landlord; however, the deposit was not refunded to the tenant.

The landlord's application for a Monetary Order was for compensation for loss of rent of \$345.00 for inadequate notice given by the tenant, and cleaning and painting costs of

\$365.00. It is not in dispute that the tenant provided written notice to the landlord on August 19, 2008 that the tenant would be vacating the rental unit on August 31, 2008.

The tenant admitted he gave inadequate notice to end the tenancy and was agreeable to compensating the landlord the equivalent of one-half of a month's rent. However, the tenant did not agree to compensate the landlord for cleaning or painting costs due to the condition of the rental unit when he moved in, the subsequent floods in the rental unit and not being provided the opportunity to participate in the inspections with the landlord. The tenant agreed to relinquish the Smartcard deposit and accrued interest owing on the security deposit for the drapery cleaning.

The landlord acknowledged that a different manager took care of the move-in inspection process and could not refute the tenant's claims concerning the move-in inspection. The landlord testified that his wife had verbally told the tenant to come see her when he was ready for a move-out inspection and that a Notice of Final Opportunity for Inspection was posted on the tenant's door September 1, 2008.

The landlord accepted the tenant's offer to authorize the landlord to retain the tenant's security deposit, accrued interest and Smartcard deposit in satisfaction of the landlord's claim.

Analysis

In accordance with section 63 of the Act, the parties were assisted and permitted to settle the dispute. I accepted the settlement reached between the parties with the effect that it is binding upon the parties and the dispute is settled under the terms of the agreement reached between the parties, which I record below.

The landlord's claim for compensation is settled for the equivalent of the tenant's security deposit, accrued interest and Smartcard deposit, which is calculated to be:

Security deposit	\$ 350.00
Accrued interest	8.28
Smartcard deposit	<u>25.00</u>
Total settlement	<u>\$ 383.28</u>

For clarity, since the tenant must compensate the landlord \$383.28 for loss of rent and drapery cleaning, and the landlord owes the tenant \$383.28 for the security deposit, accrued interest and Smartcard deposit, and these amounts completely offset each other, I do not provide the landlord with a Monetary Order. Rather, the landlord is authorized to retain the tenant's security deposit, accrued interest and Smartcard deposit in satisfaction of the loss of rent and cleaning costs claimed by the landlord.

I do not award the landlord the filing fee as I was not satisfied the landlord had provided adequate opportunity for the tenant to participate in the move-out inspection. Had the landlord proposed an actual date and time for the inspection prior to the tenant vacating, the issue of loss of rent could have been approached at that time. I find the landlord's failure to propose a date and time for a move-out inspection prior to the tenant vacating likely necessitated this application and the landlord will absorb the cost of the filing fee.

Conclusion

The parties reached a mutual agreement to settle the dispute. The landlord's claims were settled for the amount of \$383.28. The landlord is authorized to retain the tenant's security deposit, Smartcard deposit and accrued interest totaling \$383.28 in satisfaction of this settlement.

October 24, 2008

Date of Decision