



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss or damage and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

The landlord submitted an amended Application for Dispute Resolution to the Residential Tenancy Branch on November 2, 2009. The tenant was served with this evidence on the same date. Residential Tenancy Branch Rules of Procedure 2.5 require evidence and amended Applications to be served to the respondent five days prior to the hearing. As this evidence was late it has not been considered and the landlord was at liberty to provide oral testimony in relation to the original Application for Dispute Resolution dated July 15, 2009.

The tenant testified that she did not receive the evidence submitted on July 16, 2009 by the landlord to the Residential Tenancy Branch. The landlord testified that this evidence was served to the tenant with the Application for Dispute Resolution and notice of Hearing. As there was dispute in relation to service I determined that this evidence would be excluded and the landlord was free to provide oral testimony.

Issues to be Decided

Is the landlord entitled to monetary compensation in the sum of \$450.00 for unpaid move-in and move-out fees?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced in 2002 and during the term of the tenancy the tenant has had occupants move in and out of her rental unit. The landlord testified that the tenant was aware of the need to pay a \$150.00 move-in and move-out fee required by the strata and that 2002 fee for one of the tenant's occupants was paid by the landlord. The landlord is claiming a move-in fee for May 1, 2008 a move-out fee for August 28, 2008 and a move-in fee for August 21, 2009. The landlord stated she has paid the fees for 2008 and the 2009 fee remains unpaid.

The landlord stated that the tenant has been provided with a copy of the strata rules which require payment of \$150.00 for each move-in and move-out and that this fee is to be paid whether or not the elevator is reserved. The landlord referenced section #10 of the strata rules which reference the move-in and out fee. The landlord also referenced rule #2 which indicates that a \$200.00 deposit must be paid as security for the elevator key when used during moves.

The tenant confirmed that in the spring of 2008 she did pay a move-out fee to the previous strata president and that this payment was made as more of a favour than due to her understanding that it was a routine requirement. The tenant acknowledged that she does have a copy of the strata rules and that the two instances of move-in that occurred in 2008 did involve reservation of the elevator.

The tenant testified that the fee charged for a move-in on August 21, 2009 was for a foreign student who only had a suitcase and that the fee was levied as the result of a request made by the landlord to the strata council.

The landlord testified that the tenant has failed to complete the form K required by the strata on each occasion that a new tenant moves in. The tenant acknowledged that she has completed several of these forms but was not given any further forms to complete.

Analysis

Residential Tenancy Branch Regulation 7 determines that a landlord may hold a tenant responsible for strata move-in and move-out fees. I find that, at the least, by the spring of 2008 the tenant was aware of the need to pay these fees and that the tenant must reimburse the landlord for the two fees paid by the landlord in 2008 in the sum of \$300.00.



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In relation to the fee charged in 2009 I find it unreasonable to expect a tenant to pay a move-in fee for an individual who did not reserve the elevator and who only brought a suitcase. The claim for the August 21, 2009 fee is dismissed without leave to reapply.

The tenant is now aware that any reservation of the elevator required for move-in or move-out will be accompanied by a \$150.00 fee which the tenant must pay.

As the landlord's application has merit I find the landlord is entitled to filing fee costs.

Conclusion

I find that the landlord has established a total monetary claim of \$350.00 comprised of moving fees in the sum of \$300.00 and the \$50.00 fee paid for this application and I grant the landlord an order under section 67 for that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The claim for a move-in fee in August 2009 is dismissed 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: November 05, 2009.

Dispute Resolution Officer