



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 15, 16, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenants submitted a Rental Application to the landlord on April 21, 2010, at which time they paid a \$200.00 application fee. A copy of a receipt dated April 1, 2010 issued by the landlord to the female tenant in the amount of \$200.00 citing "Pre-Approval Application Fee" was submitted into evidence.

The parties also agree they entered into a tenancy agreement on April 22, 2010 for a 6 month fixed term tenancy beginning on June 1, 2010 for a monthly rent of \$750.00 due on the 1st of the month with a security deposit of \$50.00 required.

The parties further agree that on May 22, 2010 the tenants submitted a "Notice to Cancel Lease Agreement" stating the tenants would not be moving into the rental unit on June 1, 2010 and requesting the \$200.00 application fee be refunded to the tenants. The notice also notes that under provincial law the landlord should not charge an Application Fee.

The tenants contend they decided to not move into the rental unit for two reasons. First, the tenants found out that landlords are not allowed to charge application fees and they did not want to rent from a dishonest landlord and second the tenants, while unemployed at the time, wanted to live in an area where they were more likely to find

employment. The female tenant is now a student and the male tenant currently does not have full time employment.

In her testimony, the landlord's agent stated that upon acceptance of the applicants as tenants the landlord intended to take \$50.00 from the Application Fee and apply it to the \$50.00 security deposit and the remaining \$150.00 would have been applied to the tenant's first month's rent.

The landlord provided no documentary evidence to support the agent's testimony of the landlord's intention for disposition of the Application Fee. The landlord seeks only to retain this \$200.00 and is not seeking the \$350.00 liquidated damages as per the tenancy agreement or any further compensation for rent for June or July 2010.

The landlord testified that they immediately began advertising the availability of the rental unit upon receipt of the tenant's notice of their intention to not move into the rental unit but were unable to rent the unit to new tenants until August 1, 2010. The landlord provided copies of advertisements for this unit on craigslist and kijiji for the appropriate time frame.

Analysis

To be successful in a claim for compensation for damage or loss under the *Act*, regulations or tenancy agreement a party must provide sufficient evidence to confirm the following 4 points:

1. A loss or damage exists;
2. That loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any to mitigate any loss.

Section 16 of the *Act* states the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. As the parties entered into a written tenancy agreement on April 22, 2010, I find both parties were bound to these rights and obligations effective that date.

Section 45 states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is, among other things, not earlier than the date specified in the tenancy agreement as the end of the tenancy.

As the tenancy agreement indicated it was a 6 month fixed term, the earliest the tenants could have ended the tenancy would be November 30, 2010. The tenants could be held responsible for rent for any time up to the end of the tenancy or until such time as the landlord was able to re-rent the rental unit, in this case June and July, 2010, in the amount of \$1,500.00.

Based on the above, I find the landlord has established a loss exists; that it results from a violation of the Act; the value of that loss and that the landlord has taken reasonable steps to mitigate the loss.

Section 15 of the *Act* also stipulates that a landlord cannot charge a person anything for accepting an application for a tenancy; processing the application; investigating the applicant's suitability as a tenant; or accepting the person as a tenant.

As the landlord has submitted no documentary evidence of their intention regarding the disposition of the Application Fee, I find the landlord has charged the tenant's an Application Fee contrary to Section 15.

However, Residential Tenancy Policy Guideline #29 states payments for a fee for a credit report or to search records of a credit bureau paid by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord and a tenant would be, or form part of, a security deposit.

While this fee does not specifically say it will be used for a credit check, I find it reasonable to extend this principle to the application fee charged in this case. As such, I deem the Application Fee paid by the tenants to form a security deposit.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$200.00** comprised of compensation for rent owed.

As per my finding above that the landlord charge an Application Fee contrary to the Act, I dismiss their application to recover the filing fee from the tenant.

I order the landlord may deduct the security deposit and interest held in the amount of \$200.00 in total satisfaction of this claim.

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: October 22, 2010.

Dispute Resolution Officer