



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to retain the full security deposit of \$375.00 and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- They had arranged to do a walk-through and move out inspection of the rental unit for April 3, 2011.
- When the tenant arrived for the move out inspection he immediately demanded the return of the security deposit however when they informed him that they had 15 days from the end of the tenancy to hold onto the deposit, the tenant got very angry and then refuse to participate in the move out inspection.

- They therefore sent the tenant a second opportunity to participate, in the prescribed form, by registered mail, however again the tenant failed to participate.

The applicants therefore believe that the tenant has extinguished his right to return of the security deposit and are requesting an order allowing them to keep it and are requesting further recovery of their filing fee.

The respondent testified that:

- The original move out inspection was arranged for April 1, 2011 not April 3, 2011, however when he arrived to participate in the move out inspection it was the landlord who refused to allow him to participate, and had already filled out the move out inspection report.
- When he refused to sign the move out inspection form the landlord got very angry, and became violent, hitting his car at least three times.
- He therefore decided to leave for his own safety.
- He is not sure whether he received a second opportunity to participate in a move out inspection, as he was busy unpacking and does not remember, however he may have received it.
- He does not believe the landlord should be allowed to keep the security deposit, because it was the landlord who refused allow him to participate during the original move out inspection.

In response to the respondent's testimony the applicant testified that:

- The tenant was fully aware of the second opportunity to participate, and it was even mentioned in another in dispute resolution hearing that was held on April 6, 2011.
- The tenant obviously chose not to participate.

In response to the applicant's further testimony the respondent testified that:

- He did receive the second opportunity to participate in a move out inspection however the reason he did not participate at the second opportunity was because he was afraid of the landlord, due to the incident that occurred at the first opportunity.

Analysis

My finding that the tenant's right to the return of the security deposit has been extinguished because he failed to participate in the move out inspection.

There is conflicting testimony over what happened at the initial move out inspection date, however it is my finding that the landlord did serve the tenant with a second opportunity to participate in a move out inspection, in the prescribed form.

Originally the tenant stated that he cannot remember whether or not he got the second opportunity to participate in the move out inspection in the prescribed form; however he later changed his story and stated that he did receive the second opportunity, but did not participate because he was afraid of the landlord.

The Residential Tenancy Act requires that the tenant participate in the move out inspection, and if he really was afraid of the landlord I see no reason why he could not have taken precautions such as having someone accompany him to the inspection, or request that the RCMP be present for the inspection.

Conclusion

The tenant's right to the return of his security deposit has been extinguished and I therefore order that the landlord may retain the full security deposit of \$375.00.

I have also issued an order for the tenant to pay the landlord \$50.00 to cover the cost of the filing fee

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: July 20, 2011.

Residential Tenancy Branch