



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for return of his security deposit. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

On a procedural note, both parties agreed that the application would be amended to exclude naming of the building manager as a landlord. I have amended the application and this decision and the Order that accompanies it accordingly.

Issue(s) to be Decided

1. Is the tenant entitled to return of his security deposit?
2. Can the parties reach a mutual agreement to resolve this dispute?

Background and Evidence

I heard undisputed testimony that a co-tenancy commenced in March 2010 and the landlord collected a \$475.00 security deposit. The tenants were required to pay rent of \$950.00 per month. The tenancy ended February 28, 2011. The tenants paid one-half of the rent for February 2011. The tenant and the building manager participated in a move-out inspection together and the tenant signed the inspection report and a document used by the landlord to make deductions from the security deposit.

The tenant testified that he agreed to carpet cleaning and drapery cleaning costs in signing the security deposit document but did not receive the balance of security deposit as expected. Nor did the tenant receive a copy of the security deposit document he signed.

The landlord provided a copy of the security deposit document which indicated the tenant agreed to other deductions from the security deposit, in addition to carpet cleaning and drapery cleaning charges. I noted that the charges were not totalled and

some amounts appeared to be written with darker ink than the carpet cleaning and drapery cleaning charges.

The security deposit document was prepared by the building manager who was not in attendance at the hearing; however, the landlord was of the belief that all of the amount appearing on the security deposit document would have been present when the tenant signed the document. I determined that it was necessary to call the building manager as a witness.

I was able to reach the building manager who confirmed that she added charges to the security deposit document after the tenant signed it.

The landlord then submitted that the unpaid rent and cleaning charges exceeded the amount of the security deposit and the landlord was not obligated to return any of the security deposit to the tenant or file an application seeking authorization to retain it.

During the remainder of the hearing the parties were able to reach a mutual agreement to resolve this dispute. The parties agreed that the landlord will pay and the tenant will accept \$115.00 in full satisfaction of any and all claims against the other party with respect to this tenancy.

Analysis

I accept the settlement agreement reached between the parties during the hearing and make it an Order to be binding upon both parties. In recognition of the mutual agreement, the tenant is provided a Monetary Order in the amount of \$115.00 to serve upon the landlord and enforce as necessary. For further clarity, the landlord is now precluded from making any Application for Dispute Resolution against either co-tenant with respect to this tenancy.

The landlord is strongly cautioned that altering a document after it is signed by the tenant and then relying upon that signed document to support their position is false representation and constitutes fraud if done intentionally. Where a landlord seeks to retain all or part of a security deposit the landlord must have the tenant's written consent, or authorization for a Dispute Resolution Officer, for the amounts the landlord is seeking to recover. If a tenant only agrees to some charges the landlord must return the balance of the deposit to the tenant or file an Application for Dispute Resolution within 15 days. The landlord is strongly encouraged to become familiar with section 38 of the Act as violation of the requirements of section 38(1) will result in the landlord having to pay the tenant double the deposit under section 38(6) of the Act.

Conclusion

The parties reached a settlement agreement and the tenant is provided a Monetary Order in the amount of \$115.00 to serve upon the landlord and enforce as necessary. Both parties are now precluded from a making any future application against the other party with respect to this tenancy.

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 27, 2011.

Residential Tenancy Branch