



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to retain the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on April 01, 2010 for a fixed term of two years. The monthly rent was \$1280.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$640.00.

The landlord stated that on April 01, 2011, the tenant left a voice mail message stating that he would be moving out by May 01, 2011. The tenant stated that he left this message on March 31, 2011 and followed it up with a written note. The landlord filed the note into evidence. The note is dated March 31, 2011. The tenant stated that he helped the landlord find a tenant and within two days, a new tenant was found for May 01, 2011. The landlord did not suffer a loss of income.

The landlord stated that when a new tenant moves in, the strata charges the landlord a move in fee of \$400.00. The landlord agreed to cover half this fee and did so at the start of the tenancy. The tenant therefore paid only half the move in fee. The landlord stated that he agreed to cover half the fee on the condition that the tenancy continued for two years. Since the tenancy ended prematurely, the landlord is now claiming the return of the portion of the fee covered by him in the amount of \$200.00. The tenant stated that there was no agreement about him having to pay the full fee if the tenancy ended prior to two years.

The landlord stated that the tenant found the washer and dryer inadequate for his use and requested that he be allowed to install his own appliances.

The landlord agreed and the tenant dropped off the landlord's appliances at his home, prior to installing his own inside the rental unit. The landlord stated that it was also agreed upon by both parties that the tenant would re install the appliances at the end of the tenancy. The tenant argued that there was no agreement about reinstalling the appliances and that the landlord did not ask him to do so. The tenant stated that he owns a truck and would have transported and reinstalled the appliances at the landlord's request.

The landlord is claiming \$75.00 for the cost of reinstalling the appliances but did not file any evidence to support his claim. The tenant stated that the landlord did not ask him to re install the appliances during the move out inspection. The landlord stated that the tenant was rude and swore at him when he told the tenant that he would be returning the security deposit by mail and not directly to the tenant during the move out inspection.

Analysis

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case the tenant ended the fixed term tenancy prior to the end date. However the landlord did not suffer a loss of income as he found a new tenant immediately and is therefore not entitled to compensation for a breach of the contract by the tenant.

Based on the tenancy agreement and the verbal testimony of both parties, I find that there was no provision in the tenancy agreement, regarding the cost of the move in fee. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant denied having agreed to cover the entire move in fee if he ended the tenancy prior to the fixed term of two years. In the absence of other evidence to support his claim, I find that the landlord has not met the burden of proof and is not entitled to his claim of \$200.00 towards the move in fee.

The landlord also applied for \$75.00 which he stated was the cost of reinstalling the appliances. Again the tenant denied having agreed to reinstall the appliances and in the absence of evidence to support his claim, I find that the landlord is not entitled to the cost of reinstalling the appliances.

The landlord has not proven his case and must therefore bear the cost of filing his application.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in satisfaction of his monetary claim. Because the landlord has not proven his claim, it is appropriate that I order the return of the tenant's security deposit with interest; I so order and I grant the tenant a monetary order in the amount of \$640.00 (plus \$0.00 interest). This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of **\$640.00**.

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: August 17, 2011.

Residential Tenancy Branch