



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. The landlord provided evidence showing that the tenant was served with the application for dispute resolution and notice of hearing by registered mail on June 25, 2011. I accepted that the tenant had notice of the claim made against her and the hearing proceeded in her absence.

Although the landlord had originally sought a monetary order of \$1,500.00 and an order permitting her to retain the security deposit in partial satisfaction of that claim, at the hearing she advised that she was reducing her claim to the amount of the security deposit.

Issue to be Decided

Should the landlord be permitted to retain the security deposit?

Background and Evidence

The landlord's undisputed evidence is as follows. In June 2011, the parties agreed to begin a tenancy on July 1, 2011. The tenant paid a \$750.00 security deposit and \$1,500.00 in rent for the month of July. Before the tenancy was set to begin, the tenant changed her mind about renting the unit, advised the landlord that she would not be moving in and requested the return of her security deposit. The landlord was able to find a new tenant who began renting the unit in August. The landlord seeks to retain the security deposit.

The landlord entered into evidence a copy of an application for tenancy which contains the following provision:

I/We hereby certify the information provided above on this form (Applicant's Particulars) to be true. I/We agree that upon acceptance of the Rental Application by the landlord I/We shall forthwith enter into a tenancy Agreement incorporating the above terms in the Landlord's usual form which I/We have been given the opportunity to review, in which event the Contract Deposit shall be deemed to be a Rent Deposit and applied towards the rent of the [illegible]

occupancy. If I/We should fail to enter into such a tenancy agreement, in addition to any other right to damages accruing to the landlord, I/We agree and acknowledge that the contract deposit shall be forfeited.

Analysis

I am not satisfied that the \$750.00 held by the landlord is a security deposit. It is clear from the application for tenancy that the landlord collected what it characterized as a “rent deposit” at the time the tenant made an application to be considered as a tenant and that this document specifically indicates that the application was not intended to be a tenancy agreement. Section 20(a) of the Act prohibits a landlord from requiring a security deposit at any time other than when the parties enter into a tenancy agreement. Section 15 of the Act prohibits the landlord from charging a fee for accepting or processing an application for a tenancy.

As the landlord's evidence shows that the monies collected by the landlord were collected prior to having entered into a tenancy agreement, I find that they cannot be characterized as a security deposit and that they were illegally collected and held. Further, there is no evidence that the landlord has suffered any financial loss. To permit the landlord to retain the monies held would amount to permitting the landlord to collect a fee for processing the tenant's application, which is expressly prohibited under the Act. I find that the landlord is not entitled to retain these monies and I order the landlord to return \$750.00 to the tenant forthwith.

In the interest of administrative efficiency, I grant the tenant a monetary order under section 67 for \$750.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's claim is dismissed and the tenant is granted a monetary order.

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: September 27, 2011

Residential Tenancy Branch