



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

Some documentary 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 was originally an application for a monetary order for \$2200.00 however the application was subsequently amended and the amount reduced to \$1100.00. The applicant is also requesting an order to keep the full security deposit towards this claim.

Background and Evidence

The applicants testified that:

- The tenant signed an application for tenancy on July 1, 2011 and on that application is a section that states that a pet deposit of \$1075.00 will be required.
- On July 8, 2011 they informed the tenant did they had accepted her application and informed her that a lease signing appointment had been scheduled for July 19, 2011.

- On or about July 10, 2011 the tenant inform them that she was not going to take the rental unit and requested the return of her security deposit.
- They attempted to re-rent the unit on short notice however were unable to rent the unit until August 15, 2011 and therefore lost one half a month's rent.

The applicants are therefore requesting an order as follows:

lost rental revenue for August 2011	\$1075.00
Filing fee	\$50.00
Total	\$1125.00

The respondent testified that:

- She did sign an application for tenancy on July 1, 2011, however at that time the landlord had not filled in the upper portion of the application and stated that he would fill it in later as he was too busy at that time.
- You can see on the application for tenancy that the upper portion is in a different handwriting than the remainder of the application which was filled out by her.
- The landlord at no time mentioned that a pet deposit would be required, as well as a security deposit.
- The first she heard about a pet deposit was when she received the e-mail stating her application had been approved.
- She therefore contacted the agent and he apologized and stated that he forgot to inform her of the need for a pet deposit.

The respondent therefore believes that her security deposit should be returned in full, because she never agreed to a tenancy in which a pet deposit was required.

In response to the tenant's testimony the landlord testified that:

- It is their policy that no applications for tenancy are accepted unless they are completely filled out and therefore their agent would have filled out the full tenancy agreement at the time of signing.

- They have spoken to the agent and he informed them that the full application was filled out prior to signing, and that he went over each section with the tenant.

Analysis

It is my finding that the applicants have not met the burden of proving that the tenant was informed of a pet deposit at the time that she signed the application for tenancy.

Neither of the landlords representatives at today's hearing were present at the signing of the application for tenancy, and therefore they have no direct evidence as to what was on the application when it was signed.

The landlord's representatives testified that the agent that was present at the signing has informed them that it was completely filled out, however that agent did not appear at this hearing to give any direct evidence and therefore this is only hearsay evidence.

The respondent has given sworn testimony that the landlord's agent did not mention a pet deposit, and had not filled out the upper section of the application for tenancy at the time of the signing, and that the requirement for a pet deposit was added afterwards and without her agreement.

The burden of proving a claim lies with the applicant and is my decision that they have not met the burden of proving their claim that the application for tenancy was fully completed prior to signing.

I preferred the tenant's direct testimony over the hearsay evidence of the landlords, and the fact that the handwriting is different on the upper portion of the application for tenancy also supports the tenant's claim that this portion was filled out at a different time.

Conclusion

This application is dismissed in full without leave to reapply and I have issued an order for return of the full security deposit of \$1075.00 to the respondent/tenant.

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 19, 2011.

Residential Tenancy Branch