



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2010, at which time the tenant paid a \$545.00 security deposit, and ended on September 30, 2010. The parties agreed that the landlord inspected the unit at the end of the tenancy without the tenant being present. There is no evidence that the landlord gave the tenant 2 opportunities to participate in an inspection of the unit.

On October 1, 2010, the tenant provided his forwarding address in writing, signed the move-out condition inspection report and with his signature confirmed that the landlord could retain \$115.00 of the security deposit to cover the cost of cleaning. The tenant claimed that the landlord forced him to sign the document and led him to believe that the entire deposit would be retained if he did not agree to the retention of \$115.00. The landlord disputed having forced the tenant to sign the document.

The parties agreed that the landlord returned \$430.00 of the security deposit.

The tenant seeks to recover the \$115.00 which he claims was wrongfully withheld plus the cost of registered mail to send the dispute resolution documents to the landlord and recovery of the filing fee paid to bring his application.

Analysis

I do not accept that the tenant was forced to sign the condition inspection report. The tenant represented himself as an educated man and the report clearly had a large section available in which he could sign to indicate his disagreement with the report. The tenant was clearly aware of his right to dispute the landlord's claim against the security deposit and at the hearing testified that the only reason he chose to wait for a year to make his claim was because he was out of the country and otherwise occupied. I find that the tenant was well aware of his legal right to disagree with the report and that at the time the report was signed, he agreed with the report and with the retention of \$115.00 of his security deposit.

Under ordinary circumstances, the tenant's signature on the report would bar him from claiming the \$115.00 he permitted the landlord to retain. However, the parties agreed that the tenant did not participate in the condition inspection of the unit at the end of the tenancy. Section 35 of the Act requires the landlord to give the tenant at least 2 opportunities to participate in an inspection of the unit and the second opportunity must be on a form provided by the Residential Tenancy Branch as prescribed in the Residential Tenancy Regulations. There is no evidence before me to suggest that the landlord complied with his obligation to provide the tenant 2 opportunities to inspect the rental unit.

Section 36(2)(a) of the Act provides that if the landlord does not give the tenant 2 opportunities to participate in a condition inspection, his right to claim against the security deposit is extinguished. Section 38(5) of the Act provides that when a landlord has extinguished his right to claim against the security deposit, he also loses his right to retain from the security deposit an amount agreed upon in writing.

While the tenant may have been obligated to have the carpets professionally cleaned at the end of the tenancy pursuant to section 23 of the tenancy agreement and while the tenant may not have adequately cleaned the unit, and I make no findings on these issues, I find that pursuant to the aforementioned sections of the Act, the landlord lost his right to obtain the tenant's consent in writing to the retention of any part of the security deposit.

For these reasons, I find that the tenant is entitled to recover the \$115.00 which he agreed that the landlord could retain and I award him \$115.00.

I dismiss the tenant's claim for the cost of sending dispute resolution documents to the landlord via registered mail. Under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee paid to bring an application.

The tenant has asked for recovery of the filing fee. I find that the tenant should bear the cost of the filing fee as he chose to agree in writing that the landlord could retain the \$115.00 in dispute and by that action created the need for this application.

Conclusion

The landlord is ordered to pay \$115.00 to the tenant forthwith. I grant the tenant a monetary order under section 67 for this sum, which order may be enforced in the Small Claims Division of the Provincial Court. The balance of the tenant's claim is dismissed.

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: December 29, 2011

Residential Tenancy Branch