



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to joint application filed by the landlord and the tenant.

The landlord seeks:

1. To retain the security deposit;
2. A monetary Order in the sum of \$550.00; and
3. Recovery of the filing fee paid for this application.

The tenant seeks:

1. A monetary Order in the sum of \$2,050.00; and
2. Recovery of the filing fee paid for this application.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

The parties entered into a 6 month fixed term tenancy which was to have ended on August 31, 2011. Rent was fixed at \$1,490.00 per month and the tenants' paid a security deposit and pet deposit totalling \$1,490.00. The tenants also paid a \$1,500.00 "realtor's fee". The tenants did not remain in the rental unit for the entire 6 months and instead vacated one month early on July 31, 2011. The tenant says she did not believe she owed the landlord any further sum for August rent because landlord was holding their \$1,490.00 deposit which they thought could be used for August rent. When the tenants received the landlord's Application seeking to retain the deposit and seeking \$550.00 for cleaning costs, the tenants discovered at the additional \$1,500.00 realtor's fee they had paid is an illegal charge under the Residential Tenancy Act. The tenants

therefore filed their own application seeking recovery of the \$1,500.00 plus the \$550.00 the landlord is seeking for a total of \$2,050.00.

The landlord did not submit condition inspection reports; the landlord says such reports were not prepared. The landlord says he acts as agent for the landlord and he believed he was entitled to a fee for his services.

Analysis

With respect to fees and security deposits the *Residential Tenancy Act* states as follows:

Application and processing fees prohibited

- 15** A landlord must not charge a person anything for
- (a) accepting an application for a tenancy,
 - (b) processing the application,
 - (c) investigating the applicant's suitability as a tenant, or
 - (d) accepting the person as a tenant.

Terms respecting pets and pet damage deposits

- 18** (2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 [*limits on amount of deposits*] and 20 [*landlord prohibitions respecting deposits*].

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

Landlord prohibitions respecting deposits

- 20** A landlord must not do any of the following:
- (b) require or accept more than one security deposit in respect of a tenancy agreement.

The Act does not allow a landlord to collect fees other than a security and/or pet deposit. The landlord must therefore return the sum of \$1,500.00 to the tenants forthwith. As the tenant has been successful in this portion of her claim, I will also allow her to recover the \$50.00 filing fee paid for this application. With respect to the tenant's claim for \$500.00 I have insufficient evidence in this regard and it is therefore dismissed.

With respect to rent for the month of August the tenants have given their consent that the landlord may retain the pet and security deposit in the sum of \$1,490.00 in lieu of rent and the landlord may therefore retain those deposits.

With respect to the landlord's claim for \$550.00 for cleaning, the tenant states that she did have the carpets cleaned and she disagrees with these charges. The landlord did not prepare condition inspection reports. I therefore find that I am unable to determine the condition of the rental unit at the start of the tenancy as opposed to at the end of the tenancy and as well, given the short duration of the, tenancy I am not satisfied that the landlord has met the burden of proving his claim in this regard.

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 24, 2011.

Residential Tenancy Branch