



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenants. One landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of the application. The two tenants have applied against 2 landlords for double return of the security deposit or pet damage deposit and to recover the filing fee from the landlords for the cost of the application.

The tenants both attended the conference call hearing, provided affirmed testimony and provided an evidence package in advance of the hearing. The landlord did not attend, however a person who was named by the tenants in the Tenant's Application for Dispute Resolution as one of the landlords did attend the conference call hearing, but stated that the person was not there to represent the landlord, but was attending as a witness for the landlord. No one attended the hearing as an agent or representative of the landlord. The witness remained on the call as a witness only to answer any questions of the tenants. The witness did not advance any testimony or claim with respect to the landlord's application except to refer to evidence provided by the landlord prior to the hearing.

The hearing of the landlord's application and the tenants' application was scheduled to convene at 1:30 p.m. on today's date. The line remained open while the phone system was monitored for ten minutes and the only participants who called into the hearing during this time were the tenants and the witness. The landlord failed to attend to present the landlord's claim, and the tenants appeared and were ready to proceed.

In the absence of the party who made the application, I dismiss the landlord's claim without leave to reapply. I made no findings of fact or law with respect to the merits of the Landlord's Application for Dispute Resolution.

With respect to the tenants' application, the hearing was conducted and all evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenants testified that this fixed term tenancy began on January 1, 2010 and expired on December 31, 2010. Prior to its expiry, the parties entered into another fixed term which expired on June 30, 2011. A copy of the tenancy agreement was provided in advance of the hearing, and it is silent with respect to whether the tenancy was to revert to a month-to-month tenancy or if the tenants were expected to move from the rental unit at the end of the fixed term.

Rent in the amount of \$1,270.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On December 16, 2009 the landlords collected a security deposit from the tenants in the amount of \$635.00, for which the tenants have provided a copy of a cheque in that amount as well as a receipt they testified was given to them by the landlords.

The tenants further testified that on June 28, 2011 the tenants advised the landlords in writing of their intention to vacate the rental unit on June 29, 2011, and the tenants paid rent in full for that month. A copy of the tenants' notice was provided in advance of the hearing, and it states that the tenants will be moving on June 29, 2011. The tenants personally delivered the notice to the landlord's property manager on June 28, 2011.

The tenants further testified that the tenants personally delivered to the landlords a letter dated July 14, 2011 which contained the tenants' forwarding address and a request for return of the security deposit. The tenants testified that they had also emailed the forwarding address to the property manager, and provided a copy of the letter as evidence prior to this hearing.

The tenants also testified that they did not authorize the landlords to keep the security deposit and none of it has been returned. The tenants claim double recovery of the security deposit and recovery of the filing fee.

The witness testified that the witness was the property manager at the time that the tenants lived in the rental unit, but is no longer the property manager. The witness is now employed by another property management company, and pursuant to the policies, is not permitted to represent a landlord that is not contracted to the property

management company that the witness now works for. Therefore, the witness was not in a position to represent the landlord at this hearing, nor to advance the landlord's claims.

The witness further testified that the witness was the property manager at the time the landlord and the tenants filed the applications for dispute resolution, but left the property management company on September 30, 2011. The witness has been employed by the new property management company since October 1, 2011.

The witness also testified that during the tenancy, the property manager's job was to make recommendations to the landlord, but the landlord made all the decisions and then instructed the property manager how to proceed. When asked what recommendations were made to the landlord, the witness responded that the tenants were sent an email but did not elaborate on what was contained in that email. Further, the landlord has made a claim against the tenants for a monetary order and the witness is not clear why no one has appeared to represent the landlord.

The witness is of the opinion that the witness should not be named as a party (landlord) for these proceedings.

The Tenant's Application for Dispute Resolution was filed with the Residential Tenancy Branch on September 2, 2011 and the Landlord's Application for Dispute Resolution was filed on September 28, 2011.

Analysis

Firstly, the *Residential Tenancy Act* is clear with respect to security deposits; the landlord must return the security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenants provide a forwarding address in writing. If the landlord fails to do so, the landlord must pay the tenants double the amount of the security deposit, even if the landlord has a claim against the tenants. In this case, I find that the tenancy ended on June 29, 2011 and the tenants provided a forwarding address in writing, delivered to the property manager, on July 14, 2011. The landlord filed for dispute resolution on September 28, 2011 which is beyond the 15 day time limit, and in that application, the landlord has not made a claim against the security deposit at all. Therefore, I must find that the tenants are entitled to double recovery of the security deposit.

With respect to the witness' testimony that the witness is no longer employed by the property management company that was contracted by the landlord, I find that the witness was so employed at all material times during and after the tenancy ended.

Therefore, I find that the tenants have properly named the witness as a party to these proceedings and the tenants are entitled to a monetary order against both named landlords.

The tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,320.00. This order is final and binding on the parties and may be enforced.

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 22, 2011.

Residential Tenancy Branch