



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application to retain the tenant's security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The applicant is herein referred to by initials NPL and the respondent is herein referred to as TK to avoid confusion with wording contained in the evidence.

Issue(s) to be Decided

Did NPL collect a security deposit? If so, has NPL established a basis to retain the security deposit?

Background and Evidence

I was provided undisputed evidence that on January 15, 2012 TK signed a document entitled "Application for Tenancy - Confidential" and the NPL collected a \$500.00 "deposit" from the TK. Approximately 7 days later the TK advised the NPL that he no longer wished to proceed with a tenancy.

NPL is seeking to retain the "deposit", which NPL characterized as a security deposit on the Application for Dispute Resolution. NPL submitted that the reason for seeking retention of the deposit is pursuant to a clause in the Application for Tenancy that provides, in part: "Cancellation after the fifth (5th) day will result in forfeiture of the applicant's deposit." NPL also submitted it suffered a loss as the unit that was the subject of the Application for Tenancy remained vacant for February 2012.

TK was of the position he had not entered into a tenancy agreement with NPL. Rather, he signed an application to see if their references would check out. TK was of the understanding that if he was approved he would sign a tenancy agreement before the tenancy was set to commence.

NPL acknowledged that it is their business practice to sign a written tenancy agreement when the move-in inspection report is prepared, or a day before the tenancy is set to commence.

The Application for Tenancy was provided as evidence. The first line of the document states:

“I/We hereby offer to lease the residential premises specified herein and provide the following information which I/We warrant to be true to assist in your consideration of my/our application for tenancy.”

Aside from the provision for a forfeiture of the “deposit” in the event the applicant cancels the offer after the fifth day, the signature area also provides for other terms, including:

- A liquidated damages charge of \$50.00 if the applicant cancels the offer within five days of making the offer;
- A requirement to provide pre-authorized payments or post dated cheques in six (6) month segments;

Further, in capitalized letters, the signature area indicates that the applicant is consenting to a credit check “for the process of determining the acceptability of my/our application.”

The Application for Tenancy was signed by TK; however, the area that provides for acceptance or rejection of the application was left blank.

Analysis

The Act and its Regulations provide for fees that a landlord may collect and fees that a landlord may not charge.

Section 15 of the Act specifically provides that a landlord must not charge a person a fee for accepting, processing, investigating an application or a fee for accepting the person as a tenant. Below I have reproduced section 15 of the Act:

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.

The Application for Tenancy and the receipt issued on January 15, 2012 indicates the TK paid a \$500.00 "deposit". It is not referred to as a security deposit on either document. Considering the "deposit" was collected in conjunction with an Application for Tenancy and the Application for Tenancy does not indicate it was accepted by NPL, I find the \$500.00 "deposit" is actually a fee charged for accepting, processing and investigating the application. As such a fee is not permitted and should not have been collected by NPL, I ORDER that it be returned to TK.

In filing this application, NPL has requested retention of the \$500.00 paid by TK and characterized the deposit as a "security deposit". However, NPL acknowledged that written tenancy agreements are entered into with tenants and I have no reason to believe NPL deviated from such a practice in this case. As a written tenancy agreement was not presented to TK or executed by the parties I find a tenancy agreement was not entered into.

Since I have found that a tenancy agreement had not been entered into, I find the deposit collected by NPL was not a security deposit since security deposits may not be collected at any time before a tenancy agreement has formed, pursuant to section 20 of the Act. Below I have reproduced the relevant portion of section 20:

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

In summary, NPL and TK did not enter into a tenancy agreement and NPL did not collect a security deposit. Rather, NPL collected a prohibited fee for accepting, processing, or investigating the Application for Tenancy. As the Act specifically prohibits collection of such fees, I order NPL to return the prohibited fee to TK. I provide TK with a Monetary Order to ensure repayment is made.

Conclusion

This application has been dismissed and a Monetary Order in the amount of \$500.00 has been provided to the respondent to ensure he recovers the prohibited fee collected by the applicant.

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: April 05, 2012.

Residential Tenancy Branch