



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant seeking the return of the security deposit. Both parties participated in the conference call hearing. Both parties were present during the hearing and represented by their own legal counsel.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and any overpayment of the security deposit?

Background and Evidence

The tenancy began on or about August 1, 2011. Rent in the amount of \$1700.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1700.00.

The position of the tenant's counsel was as follows; the landlord did not conduct a move in or move out condition inspection, the landlord took double the amount of security deposit as prescribed by the Act, and is seeking the return of the \$1700.00 security deposit and the \$50.00 filing fee.

The position of the landlords counsel was as follows; the landlord took a larger than normal security deposit to ensure the tenant wouldn't break the lease, had every intention of doing a condition inspection report but never did conduct it, wished to address many other issues in regards to this tenancy during this hearing.

Analysis

The landlords counsel advised that there were many outstanding issues in regards to this tenancy that required dispute resolution. It was explained that the landlord is free to make application for any issues they wish to address and those issues would be dealt with in a different hearing. It was explained to the landlords counsel that the tenant is the sole applicant in this matter and that the only issue being addressed in this hearing is whether the tenant is entitled to the return of the security deposit, any overpayment of that security deposit and the filing fee.

In regards to the security deposit, both parties agree the landlord received a security deposit that was the equivalent of one month's rent. Section 19(1) of the Act states; A landlord must not require or accept either a security deposit or pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. Although the landlord feels he was justified in requiring a larger than normal security deposit, it is not in accordance with the Act and I order the return of the \$850.00 overpayment back to the tenant.

As for the remaining \$850.00 of the security deposit, Section 23(1) of the Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) further states: The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The landlord did not offer the tenant two opportunities for a condition inspection. I am satisfied that the tenant is entitled to the return of the \$850.00 security deposit and I order it be returned.

The tenant has been successful in their application.

As for the monetary order, I find that the tenant has established a claim for \$850.00 security deposit overpayment and the return of the \$850.00 security deposit for a total of \$1700.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$1750.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order of \$1750.00.

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: March 07, 2012.

Residential Tenancy Branch