



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application 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 for this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant testified that she completed a BCAOMA (British Columbia Apartment Owners & Managers Association) on January 7, 2012 and paid an application fee of \$550.00 subject to the landlord's approval of the tenancy. The tenant stated that she then discovered through the internet that there were bedbug issues, and that due to her health she could not risk taking occupancy under these conditions. The tenant said that the landlord refused to return the application deposit.

The landlord stated that the application deposit consists of half a month's rent. She testified that the tenant applied on January 7, 2012 to take occupancy on the 15th. The landlord said that her application was accepted and the deposit applied for that month's rent; she stated that when she the tenant came on January 12th to sign the tenancy agreement, the tenant informed her that she would not move in because of the bedbug issues. The landlord stated that the rental unit was bedbug free, and that she sent the tenant a letter to that effect. She said that she was able to find new tenants for February 1st, 2012, and that she lost rental income for the last two weeks of January.

Analysis

The BCAOMA form indicates that the \$550.00 the tenant paid consists of an application deposit, and not a security deposit, which is applied against the first month's rent.

Section 15 of the Act states in part that: a landlord must not charge a person anything for accepting an application for a tenancy, processing the application, or accepting the person as a tenant.

The form further states that upon acceptance the tenant is required to pay a security deposit of \$550.00.

This term is inconsistent with the Act and cannot be enforced. If the landlord accepted the tenant's application and agreed to accept the applicant as tenant, the landlord may make an application for dispute resolution and provide evidence of any loss if the tenant failed to comply with the Act or the agreement by not providing proper notice to end the tenancy.

Conclusion

The tenant is entitled to the return of her fee of \$550.00 paid to the landlord for completing an application for tenancy. Since she was successful, she is also entitled to recover the filing fee and pursuant to Section 67 of the Act, I grant the tenant a monetary order totalling \$600.00.

This Order may be registered in the Small Claims 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: April 12, 2012.

Residential Tenancy Branch