



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order permitting him to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to make a claim against the security deposit?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2010 and ended on March 31, 2012. They further agreed that the tenant paid a \$450.00 security deposit.

The parties further agreed that they did not perform a condition inspection of the unit at the end of the tenancy. The landlord testified that he gave the tenant a written opportunity to schedule the inspection, but stated that he did not have a copy of that paper. The tenant denied having received such a document.

Analysis

The landlord's claim is solely against the security deposit. Section 36(2) of the Act provides that if a landlord does not provide a tenant with 2 opportunities for inspection, the second opportunity having been in writing pursuant to the Residential Tenancy Regulations, the landlord's right to make a claim against the deposit is extinguished.

As the tenant disputed having received a written opportunity to schedule a condition inspection and as the landlord was unable to provide a copy of that document, I find on the balance of probabilities that the tenant was not given 2 opportunities to schedule in the inspection. Accordingly I find that the landlord's failure to provide those 2 opportunities has resulted in his right to claim against the deposit being extinguished.

Conclusion

The claim is dismissed. Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In the absence of evidence to the contrary, I find that the tenant has not extinguished her right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$450.00 security deposit. I grant the tenant a monetary order under section 67 for \$450.00. 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: April 26, 2012

Residential Tenancy Branch