



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was the hearing of an application by the landlord for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. the landlord's representative called in and participated in the hearing. The tenant did not attend although he was served with the application and Notice of Hearing sent by registered mail on March 15, 2012 to the forwarding address that the tenant provided to the landlord. The postal records submitted by the landlord show that the tenant signed for the registered mail on March 20, 2011.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed or in some other amount?

Is the landlord entitled to an order to retain the tenant's security deposit.

Background and Evidence

The rental unit is an apartment in Richmond. The documents submitted by the landlord as evidence on this application included a copy of a tenancy agreement and a copy of a rental application form. As set out in the tenancy agreement dated April 20, 2006, the tenancy began on May 1, 2006 for fixed term ending April 30, 2007 with monthly rent, including parking of \$870.00 payable in advance on the first day of each month. In the tenancy agreement the landlord acknowledged receipt of a security deposit in the amount of \$435.00.

The landlord also submitted as part of its documentary evidence a copy of a rental application form signed by the tenant. The application contained the tenant's personal particulars and it stated that a contract deposit of \$475.00 was received with the rental application. The applicant signed the form and there is a witness signature on the form, which is undated. The rental application contains the following provision:

I/We hereby certify the information provided above on this form (Applicant's Particulars) to be true. I/We agree that upon acceptance of this Rental Application by the Landlord, I/We shall forthwith enter into a Tenancy Agreement incorporating the above terms in the Landlord's usual form which I/We have been given the opportunity to review, in which event the Contract Deposit shall be deemed to be a Rent Deposit and applied towards the rent of the last month's occupancy.

The landlord submitted a copy of an account ledger, referred to as a "statement of account detail", as part of its evidence. The statement covered the period from February, 2011 to March, 2012. I was not provided with a ledger with respect to the commencement of the tenancy in 2006 and the landlord's representative testified that she was not employed by the landlord in 2006 when the tenancy began.

The tenant gave the landlord a written notice dated January 31, 2012. In the notice the tenant advised that he was moving out on March 1, 2012. He provided his forwarding address. The tenant did not participate in a move out inspection despite repeated telephone messages left for the tenant. The landlord conducted a move out inspection on February 29, 2012. The landlord submitted a number of photographs of the rental unit taken on February 29th. The pictures showed that the rental unit was not cleaned. The appliances were dirty and the tenant left some debris and furniture in the rental unit. The goods left behind included chairs, a table and an old television.

The landlord claimed a monetary order in the amount of \$365.00 for the cost to clean the rental unit and remove the tenant's abandoned goods. The landlord testified that the carpets in the rental unit were so dirty they needed to be cleaned twice. The landlord provided an invoice for carpet cleaning in the amount of \$185.00. The landlord claimed a further \$180.00 for cleaning and removal of the abandoned goods. The landlord said the cleaning and furniture removal was performed: "in house". The landlord did not provide any document or statement of time spent cleaning to support the claim for a cleaning charge. The landlord's representative referred me to the photographs. She said they provided ample evidence that the cleaning costs were warranted.

The landlord's account ledger for February and March, 2012 showed debits to the tenant as follows:

- Base rent: 981.77
- 2nd parking resident 20.00

- Carpet cleaning: 185.00
- Cleaning: 180.00

Total debits: 1,366.77

The landlord credited the tenant with a February 1, 2012 rent payment of \$1,001.77, a "TENANT DEPOSITS PAYA" amount of \$425.00 and "LAST MTH'S RENT INTE" of \$14.19, for a total of \$1,440.96. Although the landlord's representative did not confirm this at the hearing, the ledger entry for March, 2012 records that a refund credit of \$74.19 was paid to the tenant on March 1, 2012.

Analysis and Conclusion

Based on the photographs submitted and the testimony from the landlord's representative, I accept that the rental unit was not properly cleaned at the end of the tenancy. I allow the landlord's claim for carpet cleaning in the amount requested, namely: the sum of \$185.00. With respect to the claim for cleaning and furniture removal, apart from saying the work was performed: "in house" the landlord has not given any rationale for the amount claimed or provided a document to show how the amount was calculated. In the absence of an explanation or a calculation of cleaning and removal costs and based on the photographs, I estimate an appropriate award for cleaning and removal costs at \$100.00 and I award the landlord the said amount. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$335.00.

During the hearing I asked the landlord's representative to explain what was paid by the tenant prior to the beginning of the tenancy. The landlord's representative testified that she was not employed by the landlord at that time. She stated her view that the landlord received a half month's rent as a security deposit, but her statement was not based on any documentary evidence.

The landlord has submitted as part of its evidence documents recording two payments to the landlord; one payment of \$475.00 described as a "Contract Deposit" and the second, a security deposit of \$435.00 acknowledged by the landlord to have been received when the tenancy agreement was signed. There is no documentation or ledger entries recording the receipt of these payments or showing that a contract deposit was applied as a security deposit. The evidence shows on a balance of probabilities that the landlord received two separate payments on different occasions, one in the amount of \$475.00 when the tenant made an application for tenancy and a second payment of \$435.00 when he signed the tenancy agreement on April 20, 2006.

I find that the landlord is bound by the evidence it has submitted on this application. The Rental Application form, which is the landlord's document, states that the Contract Deposit will be deemed to be a rent deposit and applied towards the last month's rent. In the absence of any evidence to the contrary I therefore find that it was not converted into a security deposit when the tenancy agreement was signed. The following provisions from the *Residential Tenancy Act* are relevant:

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.

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

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;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;

The quoted provisions establish that the landlord was not entitled to charge a contract fee or to receive a security deposit at any time before the tenancy agreement was signed or to receive more than one security deposit. Although the landlord was not entitled to require the tenant to pay a contract deposit and although it is not properly a security deposit under the Act, I find that the payment must be accounted for on this application.

I credit the tenant with the Contract Deposit of \$475.00, the security deposit of \$435.00 and interest on the security deposit in the amount of \$14.74 for a total of \$924.74. I deduct from that amount the award to the landlord in the amount of \$335.00 and the payment of \$74.19 as recorded in the landlord's ledger. This leaves a balance of \$515.55 due to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. 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 this application the landlord requested the retention of the security deposit in satisfaction of his monetary claim. Because there is a balance due to the tenant after deducting the award to the landlord, it is appropriate that I order the return of the tenant's deposits with interest on the security deposit only; I so order and I grant the tenant a monetary order in the amount of \$515.55. 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: May 15, 2012.

Residential Tenancy Branch