

DECISION

Dispute Codes MNSD, FF, MNR, MND

Introduction

This hearing dealt with cross applications. The landlord is seeking an order to retain the security deposit. The tenant is seeking the return of double the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to retain the security deposit?

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on or about June 1, 2009 and ended on February 1, 2012 due to a house fire. Rent in the amount of \$1800.00 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 \$900.000.

The landlord gave the following testimony; a condition inspection report was done upon move in by his property manager, the house had just undergone a \$300,000.00 renovation and was in pristine condition, is not seeking recovery of costs for anything in the house itself, is seeking to retain the security deposit for having to remove garbage and personal items left by the tenant's after the fire and to repair lawn damage that occurred during the tenancy.

The tenant's agent gave the following testimony; disputes that a condition inspection was ever done, seeking the return of double the security deposit.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with the landlord's application as follows;

The landlord gave testimony that a condition inspection report had been conducted by his property manager, however due to personal matters the property manager was not able to attend the conference. In addition the landlord was unable to provide a copy of the condition inspection report for this hearing. Section 36(2) of the Act clearly outlines that a landlord extinguishes his right to make a claim against a security deposit if the condition inspection report was not conducted upon move in and move out. The landlord submitted some photos for the hearing but was not helpful. Based on the insufficient evidence provided by the landlord I dismiss his application in its entirety.

I will deal with the tenant's application as follows;

The tenant's are seeking the return of double the security deposit. I asked the tenant's agent on three occasions when the forwarding address was given to the landlord and in what manner. Each time the tenant's agent stated he was not sure as he had not been given those instructions. The landlord stated that he did not become aware of their forwarding address until the tenant's filed for dispute resolution. The tenant's agent has not satisfied me that the landlord was given the forwarding address in writing upon the end of tenancy nor any time prior to the tenant's filing for dispute resolution. I do not find that the tenants are entitled to the return of double the deposit. The tenant's are entitled to the original security deposit in the amount of \$900.00.

As for the monetary order, I find that the tenant has established a claim for \$900.00.

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 \$950.00. 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 for \$950.00. The landlord may retain the security deposit.

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: June 06, 2012.

Residential Tenancy Branch