



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPB, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss, to retain the security deposit,, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant did not move into the unit; therefore, an Order of possession was not required.

Neither party served the other with their evidence. Therefore, the evidence was set aside and the parties were at liberty to provide oral testimony.

Issue(s) to be Decided

Is the landlord entitled to retain the \$675.00 deposit as compensation for damage or loss?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed to a number of facts:

- They met on June 5, 2012, when the tenants viewed the rental unit;
- On June 7, 2012, the tenants gave the landlord a deposit in the sum of \$675.00, to secure the unit for rental;

- That the landlord accepted the deposit and then checked references to determine if she would rent the unit to the tenant;
- That on June 11, 2012, the landlord determined that she would accept the tenants; and
- That the tenants changed their minds and did not sign a tenancy agreement with the landlord.

When asked, the landlord confirmed that if the references had not been positive she would have returned the deposit to the tenants and not accepted them as tenants.

Analysis

I find that the landlord accepted a fee from the tenants prior to having entered into a tenancy agreement. I have based this finding on section 20(a) of the Act, which provides:

Landlord prohibitions respecting deposits

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

There was no dispute that if the tenant's references had been negative that the landlord would have returned the fee paid and refused to offer the rental unit to the tenants.

As the landlord accepted what I find was a fee, to hold the unit for possible rental, I find that a tenancy was not initiated. Therefore, as a tenancy did not commence, I decline jurisdiction.

Conclusion

Jurisdiction is declined.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 17, 2012.

Residential Tenancy Branch