



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlords sought permission for an observer, A.S., to attend the hearing. The Tenant, however objected to another party who was not a witness attending the hearing and as a result, A.S. was asked to leave the conference call and did so.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on December 1, 2011 and expired on May 31, 2012 at which time the Tenant moved out. Rent was \$1,600.00 per month payable in advance on the 1st day of each month. At the beginning of the hearing, the Parties confirmed that they had signed the following agreement dated June 11, 2012:

"I, [Tenant], agree to cancel the dispute resolution file #791423 as a resolution has occurred between [the Landlord], the owner of the above mentioned unit and myself. I will be receiving \$600.00 back from my deposit as the agreed settlement for the above file #. I will bring [the Landlord] written confirmation that the hearing has been cancelled prior to receiving the cheque and no further action will be taken in this matter as it has now been resolved."

The Parties also confirmed that the Tenant received and cashed a cheque from the Landlords in the amount of \$600.00 but that the Tenant did not cancel the hearing. The Tenant said he did not cancel the hearing and does not now agree to proceed with this agreement because he alleged, the Landlords also agreed verbally to reimburse him for some bank charges but failed to do so. The Landlord, D.D., denied that there was a

verbal agreement as alleged and she said she advised the Tenant that she would look into whether the Landlord would reimburse him, but that nothing was agreed to and it was a separate matter. D.D. claimed that the above written settlement agreement was intended to be in full and final satisfaction of any and all claims that both parties might have against the other arising out of the tenancy. D.D. noted, for example, that the Landlords agreed to forego the payment of the last month's rent and cleaning expenses at the end of the tenancy in reliance on the Tenant's agreement.

The Tenant also argued that he was entitled to recover the filing fee for this proceeding because had he not filed his application, the Landlords would not have compensated him. The Landlords argued that the Tenant should not be entitled to recover the filing fee for this proceeding because he agreed to cancel the hearing of his monetary claims in return for the payment of \$600.00.

Analysis

The Tenant admitted that he signed the written agreement dated June 11, 2012 to settle his claims in this matter in consideration for the return of \$600.00 of his security deposit. However, the Tenant also claims that there was a verbal agreement that the Landlords would pay an additional amount for bank charges and that their failure to do so invalidates the written agreement.

On this issue, the Tenant has the burden of proof and must show (on a balance of probabilities) that there was an additional term to the written agreement that was not satisfied by the Landlords. However, given the contradictory evidence of the Landlords on this issue and in the absence of any corroborating evidence from the Tenant to satisfy the burden of proof, I find that there is insufficient evidence to conclude that there was a verbal agreement as alleged. Consequently, I find that in entering the written agreement dated June 11, 2012, it was the intention of both parties that it would be in full and final satisfaction of any and all claims both might have arising out of the tenancy. As a result, I find that it is not now open to the Tenant to try to set aside that agreement and seek further compensation.

The Tenant also sought to recover the filing fee for this proceeding. The Tenant said the Landlords would not have dealt with his concerns or claims for compensation had he not filed his application. The Landlords argued that the Tenant agreed to cancel the hearing and in doing so, was not entitled to recover the filing fee. Based on the Parties' written settlement agreement, I find that the Tenant agreed to cancel this hearing, the result of which would have meant that all of his monetary claims (including that for the filing fee) would have been withdrawn. Consequently, I find that the Tenant is not entitled to recover the filing fee.

Conclusion

The Tenant's application is dismissed without leave to reapply on the grounds that the claims for compensation were already been dealt with in settlement agreement entered into by the Parties' on June 11, 2012.

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: July 11, 2012.

Residential Tenancy Branch