



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 tenants for an order compelling the landlord to return their security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2011 at which time the tenants paid a security deposit of \$812.50 and that it ended on May 1, 2012. They further agreed that the tenancy was set to run for a fixed term, expiring on July 31, 2012 and that the tenants ended the tenancy prior to the end of the term.

The parties conducted an inspection of the rental unit at the end of the tenancy and prepared a condition inspection report. On the report, the landlord had indicated that the tenants were responsible for \$910.00 in liquidated damages. The tenant B.T. signed the report underneath a paragraph which read in part, "I agree with the amounts noted above and authorize deduction of any balance due Landlord from my Security Deposit". At the hearing, B.T. testified that he signed the document and after he had signed, the landlord explained that he was responsible for liquidated damages.

The tenant argued that prior to the landlord's verbal explanation, he did not understand that by signing the document he was authorizing the landlord to retain his deposit. The tenant argued that a previous property manager had send him an email indicating that he would only be responsible for paying liquidated damages if the landlord was unable to re-rent the unit. The tenant did not provide a copy of that email into evidence prior to the hearing. The tenant argued that because the landlord did not lose rental income, they should not be entitled to liquidated damages.

Analysis

I find that the tenants are bound by B.T.'s written authorization for the landlord to retain the security deposit. B.T. confirmed that he can read and understand English and as his oral communication was flawless during the hearing, I am satisfied that he was capable of understanding the meaning of the document he was signing.

Because the tenants agreed in writing to the retention of their security deposit, the issue of whether the landlord is entitled to liquidated damages is irrelevant. However, it may be helpful to the tenants to know that the tenancy agreement shows that liquidated damages were designed not to address loss of income, but the costs of re-renting the rental unit, which suggests administrative costs and fees. The fact of having avoided a loss of rental income would not have affected the landlord's contractual entitlement to liquidated damages.

Conclusion

The tenants' claim is dismissed. 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: July 11, 2012

Residential Tenancy Branch