



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution made by the landlord for an order permitting the landlord to keep all or part of a security deposit and to recover the filing fee from the tenant for the cost of this application.

The landlord filed this application on March 6, 2013 and served the tenant by registered mail on March 9, 2013 with a copy of the application and Notice of Hearing. The tenant confirmed receipt of the hearing documents and based on this I find the tenant was served in accordance with the *Residential Tenancy Act*.

Both parties attended the conference call hearing, during which they gave affirmed testimony. Only the relevant evidence, relating to the issues applied for, has been considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to keep a part of the security deposit?

Background and Evidence

Both parties agreed that the tenancy started on August 1, 2012 on a month-to-month basis and ended on February 28, 2013. Rent in the amount of \$850.00 was payable on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$425.00 sometime in July, prior to the tenancy starting and a written tenancy agreement was completed.

During the hearing the landlord testified that the move-in and move-out condition inspection reports were not completed. The landlord testified that a move-in condition inspection was conducted by an agent acting on her behalf, but a written report to this effect was not completed. The landlord further testified that the move-in inspection was also conducted in the presence of the tenant but the tenant refused to sign it. However, the landlord was unable to produce a written copy of this report.

The tenants testified that a forwarding address was provided to the landlord on February 28, 2013 which was confirmed by the landlord. They further testified that no move-in or move-out condition inspection reports were completed by the landlord.

Analysis

Section 23 of the *Residential Tenancy Act* states that a landlord must complete a condition inspection **report** at the start and end of the tenancy. In this case I find that the landlord failed to complete a move-in and move-out condition inspection report and neither was provided in the evidence submitted by the landlord for this claim.

The *Act* states that a landlord's right to make a claim against the security deposit for damages is extinguished if the landlord fails to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. In this case, I find that the landlord has failed to establish that the reports were completed, and I find that the landlord's right to make a claim against the security deposit for damages is extinguished.

The Landlord's Application for Dispute Resolution does not indicate a claim for damages; however, the landlord has referred to damages in the details portion. Although I have made a finding that the landlord's right to **claim against the security deposit** for damages is extinguished, the landlord's right to make a **claim for damages** is not extinguished and therefore the landlord is at liberty to make a separate claim for damages to the unit, site or property.

Under the heading, Return or Retention of Security Deposit through Arbitration, in Policy Guideline 17, if the landlord's right to make a claim against the deposit has been extinguished, the Arbitrator will order the return of double the deposit. Therefore, I find that the landlord must return double the amount back to the tenants in the amount of \$850.00.

Conclusion

For the reasons set out above, the landlord's application to keep the security deposit and recover the filing fee is hereby dismissed.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$850.00.

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 30, 2013

Residential Tenancy Branch

