



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a Monetary Order: for unpaid rent or utilities; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the '*Act*'), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord served the tenant with a copy of the application and the Notice of Hearing documents by registered mail. The Canada Post tracking receipt was provided as documentary evidence for this method of service. Section 90 of the *Act* states that a document served by registered mail is deemed to have been received 5 days later. Based on this, I find the tenant was served the hearing documents in accordance with the *Act*.

The owner of the property, and the property manager named on the application as the landlord, appeared for the hearing. There was no appearance for the tenant or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the *Act*. The landlord's affirmed testimony and documentary evidence was carefully considered in this decision.

At the start of the hearing the landlord withdrew all portions of the application and only wanted to address the issue of keeping the security deposit paid by the tenant. As a result, the remainder of the application is dismissed with leave to re-apply.

Issue(s) to be Decided

- Is the landlord entitled to keep the tenant's security deposit?

Background and Evidence

The landlord testified that the tenancy started on September 1, 2012 for a fixed term of one year intended to go on to a month to month basis thereafter. A written tenancy agreement was completed and provided as evidence for this hearing. Rent was payable by the tenant in the amount of \$825.00 on the first of every month. The tenant paid the landlord a security deposit in the amount of \$412.00 on August 15, 2013, which the landlord still retains.

The landlord testified that he spoke with the tenant in the parking lot on July 28, 2013, who verbally told him that he would be vacating the rental unit; however, the tenant did not provide the landlord with an exact date and the landlord testified that the tenant moved out completely the next day.

The landlord then testified that the tenant called him on August 14, 2013 and provided him with a forwarding address over the phone. The landlord made the application to keep the tenant's security deposit on the same day.

The landlord testified that the tenant had not provided any written notice of vacating the rental suite and the landlord was not able to re-rent out the property until September 22, 2013 to mitigate his loss in regards to the tenancy. However, the landlord only claims the tenant's security deposit in the amount of \$412.00 as compensation for abandoning the fixed term tenancy.

Analysis

I have completed the following analysis of the landlord's claim in the absence of any evidence from the tenant to dispute the evidence and base my reasons on the landlord's affirmed testimony and documentary evidence provided.

Based on the landlord's testimony, I find that, whilst the tenant did not provide the landlord with the forwarding address in writing, instead choosing to provide this over the phone, I find that the landlord made the application to keep the tenant's security deposit within the allowed time limits stipulated by the *Act*.

I also find that there is no evidence to suggest that the tenant gave the landlord any written notice to end the tenancy in accordance with the *Act*, instead the tenant chose to abandon the rental unit, leaving the landlord to make efforts to re-rent the suite at the landlord's cost for the remainder of the tenancy.

Policy Guideline 3 to the *Act* states that a landlord maybe compensated up until the earliest time the tenant could have legally ended the tenancy. The written tenancy agreement signed by the landlord and tenant states that the fixed term tenancy would

have ended on the last day of September, 2013. However, based on the landlord's testimony the tenant abandoned the rental suite earlier and therefore, I find that the landlord is entitled to keep the tenant's security deposit in satisfaction of the losses incurred by the landlord.

Conclusion

For the reasons set out above, I order the landlord to keep the tenant's security deposit in the amount of \$412.00.

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: November 15, 2013

Residential Tenancy Branch



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