



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hamasaki Ent. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application to retain the security deposit / and to recover the filing fee. The landlord attended and gave affirmed testimony. During the hearing the landlord withdrew her application to recover the filing fee. The landlord testified that she served the application for dispute resolution and notice of hearing by way of registered mail. Despite this, the tenant did not appear.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on June 1, 2013. Monthly rent is \$1,100.00, and a security deposit of \$550.00 was collected. The landlord testified that while the tenancy agreement names female tenant "CD" and male tenant "JH," the landlord's application for dispute resolution names only male tenant "JH."

The landlord testified that after "CD" vacated the unit sometime in August 2013, the landlord returned half of the security deposit to "CD" in the amount of \$275.00.

The landlord further testified that "JH" gave notice on August 17, 2013 of his intent to vacate the unit by September 1, 2013. However, in her application the landlord documents that "JH's" belongings were "still in the property" by September 3, 2013. When he finally vacated the unit, "JH" gave the landlord his forwarding address, and the landlord then filed her application for dispute resolution on September 4, 2013.

The landlord seeks to retain “JH’s” portion of the security deposit arising from “JH’s” over holding of the unit into September 2013, and in order to partially offset her loss of rental income for September 2013 as a result.

Analysis

Residential Tenancy Policy Guideline # 3 speaks to “Claims for Rent and Damages for Loss of Rent,” in part as follows:

Section 44 of the Residential Tenancy Act and section 37 of the Manufactured Home Park Tenancy Act set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

Based on the information in the landlord’s application, and in consideration of the affirmed / undisputed testimony of the landlord, I find that the landlord has established entitlement to retention of tenant “JH’s” full security deposit of \$275.00. I find that this entitlement arises out of a combination of the tenant’s over holding of the unit into September 2013, and the landlord’s related loss of rental income for September 2013.

Conclusion

The landlord’s application to recover the \$50.00 filing fee is withdrawn. I hereby order that the landlord may retain tenant “JH’s” security deposit of \$275.00.

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: December 11, 2013

Residential Tenancy Branch

