



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on September 20, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on May 1, 2013 and end on April 30, 2014. The rent was \$1250 per month payable in advance on first day of each month. The tenant(s) paid a

security deposit of \$625, a pet damage deposit of \$400 and a \$50 FOB deposit at the start of the tenancy.

On August 3, 2013 the tenant gave the landlord written notice he was vacating the rental unit on October 1, 2013. He testified he was unaware he signed a fixed term tenancy.

The tenant's rent cheque for August was returned NSF. The tenant subsequently provided the landlord with a cheque dated August 20, 2013 in the sum of \$625. The tenant produced a photocopy of his bank statement that indicates the \$625 cheque was cashed on September 6, 2013. In addition the tenant's rent cheque for September in the sum of \$1250 was also cashed on September 6, 2013

The tenant vacated the rental unit on September 7, 2013. At that time the parties did a quick walk through. The tenant signed a Condition Inspection report stating that the landlord could retain the security deposit of \$625 and the pet damage deposit of \$400.

There is confusion between the parties as to exactly what was agreed. The tenant testified he agreed to permit the landlord to keep the two deposits on the basis that he was released from all claims including the claim for rent for September. The tenant testified he was unaware the cheque for September had been cashed.

The landlord disagreed. He testified the tenant gave notice he was vacating on October 1, 2013 and thus the landlord was entitled to cash the cheque for September. Further, the agreement was for the landlord to keep the deposits in lieu of the outstanding rent of \$670 for August (including a \$45 bank charge), carpet cleaning, cost of showing the unit and the cost of screening prospective applicants. The landlord acknowledged that the specifics of what was agreed to was not discussed with the tenant.

The landlord re-rented the premises with the new tenant taking possession at the beginning of October.

Analysis

Unfortunately the parties were not as careful as they should have been in determining the specifics of what was agreed to. In a situation such as this an arbitrator is forced to the best he/she can to determine a fair resolution of the dispute.

I determined that as this is a fixed term tenancy agreement the tenant is obliged to pay the rent during the duration of the fixed term subject to any agreement to the contrary and the landlord's obligation to mitigate.

The tenant gave the landlord written notice he was vacating October 1, 2013. I determined the landlord was entitled to cash the rent cheque for September. The tenant failed to prove there was an agreement to the contrary. The tenant stayed in the rental unit until September 7, 2013. The landlord did not have an opportunity to rent it to someone else. As a result I dismissed the tenant's claim for reimbursement of the rent for September.

The tenant signed a written document that provided that the landlord could retain the security deposit and pet damage deposit. As it turns out the parties were not clear as to what they were agreeing to. However, the landlord relied on the tenant's signature in the document and did not bring a claim. As a result I determined the tenant is estopped from making a claim for double the deposits.

I determined the most appropriate way to resolve this dispute is to determine that the tenant is entitled to the return of the deposits subject to any claims the landlord has. The security deposit of \$625, pet damage deposit of \$400 and FOB deposit of \$50 totals \$1075. I determined the landlord is entitled to deduct the following from this sum:

- The sum of \$670 being the outstanding rent including bank charge for August. The tenant testified he gave the landlord a cheque on August 20, 2013 in that sum. His bank account indicates that cheque was cashed on September 6, 2013. He subsequently testified he gave the landlord another cheque for the

arrears of rent. This is inconsistent with his earlier testimony. The tenant failed to present sufficient evidence to prove this allegation. I do not accept the testimony of the tenant that he gave the landlord another cheque for the rent for August.

- I determined the landlord is entitled to deduct \$120 for carpet cleaning. The tenant testified he cleaned the carpets. I have viewed the photographs and determined that whatever cleaning the tenant did was not sufficient. The amount claimed is reasonable.
- The landlord testified he is entitled to the sum of \$240 for showing the property to prospective tenants. The tenant is not responsible for this claim and accordingly that claim is dismissed.
- The landlord claimed he is entitled to deduct \$140 for the cost of screening prospective applicants. Section 15 of the Residential Tenancy Act provides as follows:

Application and processing fees prohibited

15 A landlord must not charge a person anything for

- (a) accepting an application for a tenancy,
- (b) processing the application,
- (c) investigating the applicant's suitability as a tenant, or
- (d) accepting the person as a tenant.

I determined the landlord is not entitled to claim the cost of screening prospective tenants.

I determined the landlord holds the sum of \$1075 in the form of deposits. I further determined the landlord is entitled to deduct the sum of \$790 leaving a balance of \$285.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$285 plus the sum of \$50 in respect of the filing fee for a total of \$335.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 20, 2013

Residential Tenancy Branch

