



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sterling Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application for an order for return of a security deposit, and a request for recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the tenant entitled to an order for the return of her security deposit and recovery of her filing fee?

Background and Evidence

October 9, 2013 the applicant signed the tenancy agreement agreeing to rent the above rental unit, and at that time paid a security deposit of \$525.00.

On October 15, 2013 the tenant gave the landlords a signed letter that stated she will no longer be taking the rental unit and if the unit doesn't rent she understands she will lose her damage deposit.

The applicant testified that:

- she admits that she signed a letter stating she will no longer be taking the unit and that she understands she will lose her damage deposit, however when she signed that letter the landlords told her it was only a formality and that her damage deposit was going to be returned.
- The only reason she signed the letter was because the landlords insisted that she write such a letter or they would not return her damage deposit.

The landlord testified that:

- They never told the tenant she would be getting your damage deposit back, the tenant was told that if they were able to re-rent the unit they would return her damage deposit, however they were unable to do so and therefore lost the rental revenue.
- They did not force the tenant to write the letter, they only requested that she give them written notice that she would not be taking the unit, and that she understood that if they were unable to re-rent it she would lose her damage deposit.
- They believe this is written permission to keep the tenants damage deposit and therefore they did not apply for dispute resolution.

Analysis

first of all I want to state that the address that the applicant put on the application for dispute resolution was incorrect, however at the beginning of the hearing both sides agreed to amend the address to the correct address of the rental unit.

Under section 38(4) of the Residential Tenancy Act the landlords may keep the security deposit if at the end of the tenancy the tenant gives them written permission to do so.

In this case it is my finding that the tenancy ended when the tenant informed the landlords that she would not be taking the rental unit, and it is also my finding that the letter she signed did give the landlord's written permission to retain the security deposit if they were unable to re-rent the unit.

The applicant claims she was coerced into signing the above letter, however she has provided no evidence to support that claim, and the landlords deny any coercion.

It is my finding therefore that the tenant has not met the burden of proving that she was coerced into signing away her security deposit.

I therefore will not allow the tenants request for an order for return of the security deposit or recovery of her filing fee.

Conclusion

This application is dismissed in full without leave to reapply.

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: February 27, 2014

Residential Tenancy Branch

