



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for a Monetary Order for unpaid utilities and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Landlords also applied to keep the Tenant’s security deposit and to recover the filing fee for the cost of the application.

An agent for the Landlords appeared for the hearing and provided affirmed testimony during the hearing and also submitted documentary evidence prior to the hearing which was served to the Tenant in accordance with the Residential Tenancy Branch Rules of Procedure.

The Landlord’s agent testified that the Tenant had been served with a copy of the application, a copy of the evidence and the Notice of Hearing documents on November 22, 2013 by registered mail pursuant to section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking number as evidence for this method of service. Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. As a result, I find that the Tenant is deemed served with the Notice of hearing documents on November 27, 2013 pursuant to the Act.

However, the Tenant failed to appear for the hearing and did not provide evidence prior to the hearing, despite being served notice of this hearing in accordance with the Act.

At the start of the hearing, the Landlord testified that the Tenant had informed her that he would not be appearing for the hearing as he consented to the Landlord keeping the security deposit. However, the Landlord was unable to provide any evidence relating to the Tenant’s consent and therefore the proceeding continued in the absence of the Tenant. The undisputed evidence of the Landlords and Landlord’s agent has been carefully considered in this decision.

Issue(s) to be Decided

- Did the Landlord deal with the Tenant's security deposit pursuant to the Act?
- Has the Tenant extinguished his right to the return of the security deposit?

Background and Evidence

The Landlord's agent testified that this tenancy started on August 1, 2012 on a fixed term basis of one year which then continued on a month to month basis. The Tenant paid a security deposit of \$450.00 on July 25, 2012 which the Landlords still retain. Rent for the suite was payable by the Tenant in the amount of \$900.00 on the first day of each month.

The Landlord's agent testified that the move in condition inspection report, which was provided as evidence, was completed on August 1, 2012. The Landlord testified that the report submitted as evidence shows that it was completed on April 1, 2012 which was a clerical error.

The Landlord's agent testified that at the end of the tenancy she advised the Tenant that a move out inspection report was scheduled for October 29, 2013 and provided a copy of a document which is issued to all renters that explains their obligations in returning the rental suite at the end of the tenancy. The Landlord's agent testified that the Tenant advised on the day of the move out inspection that he had completed his move out of the rental suite and was unable to attend the inspection because he had to work. The Tenant further advised that the move out inspection could be completed in his absence and that the Landlord should call him if there were any issues with the rental suite. This conversation was recorded on the 'Notes' section of the report.

The Landlord's agent submitted that the carpets in the rental suite had not been cleaned and that there were outstanding utility bills but that the Tenant disagreed with the carpet cleaning. As a result, the Tenant provided the Landlords with a forwarding address in writing on November 6, 2013. As a result, the Landlords made the Application on November 19, 2013 to claim \$448.92 for the unpaid utilities and carpet cleaning.

The Landlord's agent testified that as the Tenant had given permission to keep all of the security deposit, this was the only item the Landlords were seeking to claim in this hearing and as a result, the Landlord's agent withdrew the remainder of the Landlords' application including the recovery of the filing fee.

Analysis

I accept the undisputed evidence of the Landlord's agent that the Tenant provided a forwarding address on November 6, 2013. As a result, I find that the Landlords made the Application to keep the Tenant's security deposit within the allowable time limits stipulated by the Act.

I also find that the Landlord and Tenant together completed a move in condition inspection report on August 1, 2013. Section 36(1) of the Act states that the right of a Tenant to the return of the security deposit is extinguished if the Landlord provided an opportunity for the Tenant to attend the condition inspection and the Tenant had not participated. Part 3 of the Residential Tenancy Regulation provides further instructions on how condition inspections are to be arranged and conducted.

In relation to the Act and Regulations, I find that the Landlord provided the Tenant an opportunity to attend the move out inspection on October 29, 2013 at 1:00 pm and that the Tenant failed to appear and take part in the inspection. I also find that the Tenant did not suggest an alternative date and time before the move out inspection took place, which could have potentially been accommodated or considered by the Landlord for a second opportunity for the Tenant to participate. As a result, I find that the Tenant extinguished his right to the return of his security deposit pursuant to section 36(1) of the Act, and therefore there is no requirement for the Landlords to return the Tenant's security deposit.

Conclusion

For the above reasons, I order the Landlord to retain the Tenant's security deposit in the amount of \$450.00 in full satisfaction of the Landlords' claim. The remainder of the Landlord's application is dismissed.

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: March 14, 2014

Residential Tenancy Branch

