



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant both attended and each gave affirmed testimony. The landlord also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant. All evidence and testimony provided has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2011 and ended on July 15, 2013. Rent in the amount of \$700.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord.

The tenant further testified that the tenancy agreement was signed by an employee of the tenant on behalf of the tenant, and a copy has been provided by the landlord. It states: "A written 30 days notice is required by both parties upon cancellation of rental agreement." The tenant testified that he wrote a letter to the landlord on June 3, 2013

stating that the tenant would be moving out of the rental unit in 30 days and advises the landlord of the tenant's forwarding address. The letter was signed by the tenant and then emailed to the landlord June 3, 2013. A copy of the letter has been provided. The parties subsequently had conversations wherein the tenant agreed to stay and pay rent till July 15, 2013, which he did, and testified that the date was mutually beneficial to both parties. No move-out condition inspection report was completed.

The tenant contacted the landlord on August 27, 2013 requesting the security deposit be returned, and then followed up with an email the next day but has still not received any portion of the security deposit. The tenant specifically stated that he is not applying for double the amount, but \$700.00 as return of all of the security deposit paid to the landlord.

The landlord testified that rent is payable on the 1st day of the month, so technically the tenant still owes for the balance of July, 2013 rent. Further, the tenant left the rental unit without taking the keys to the landlord and without allowing the landlord to complete the move-out condition inspection report. The tenant's employee just left while the landlord was busy.

The landlord further testified that the tenant left the rental unit generally unclean and 49 hours was spent cleaning after the tenancy had ended. The landlord states that the tenant owes the landlord 49 hours of cleaning time at \$25.00 per hour.

At the end of the hearing, the landlord stated that the Residential Tenancy Branch has no jurisdiction over this matter because the property is on native land. When asked why he didn't raise a jurisdictional issue at the commencement of the hearing, the landlord responded that the address shows that it is on native land, but no evidence of that has been provided. The landlord then abruptly left the call.

Analysis

Firstly, with respect to the landlord's position that the Residential Tenancy Branch has no jurisdiction, I find that the landlord raised the issue only after the hearing had almost ended and did so to attempt to prevent an enforceable order being imposed against him. The landlord has provided no evidence that the rental property is on native land, and has provided no evidence that the Residential Tenancy Branch lacks jurisdiction. Therefore, I accept jurisdiction.

The *Residential Tenancy Act* prohibits a landlord from collecting more than half a month's rent for a security deposit. In this case, the parties agree that the landlord collected a full month's rent, and that the landlord has not returned any portion to the tenant. The *Act* also states that a landlord must return a security deposit in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or apply for dispute resolution claiming against the deposit within that 15 day period. If the landlord fails to do so, the landlord must be ordered to repay the tenant double the amount. In this case, I find that the tenancy ended on July 15, 2013 and that the landlord received the tenant's forwarding address in writing on June 3, 2013. The landlord did not make an application for dispute resolution and did not return the security deposit.

The tenant has specifically waived doubling the deposit, and I therefore grant a monetary order in favour of the tenant for \$700.00. Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$750.00.

This order is final and binding and may be enforced.

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: September 10, 2014

Residential Tenancy Branch

