



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for money owed or compensation for loss under the Act?
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for loss under the Act?

Is either party entitled to the security deposit?

Background and Evidence

The tenants completed a residential rental application on June 24, 2014, as a requirement of the application the applicants were required to include a security deposit in cash or cheque. The application was subject to a credit report. Filed in evidence is a copy of the residential rental application.

The landlord testified when he accepted the tenants' rental application he stopped interviewing other potential renters. The landlord stated he completed the credit report and was satisfied with their application, however, the tenants backed out of the contract when he presented them with a tenancy agreement. The landlord stated as a result of the tenants' failure to take possession as stated in the application he lost rent for July 2014. The landlord seeks to recover loss of rent for July 2014 in the amount of \$675.00.

The tenant testified that after they completed the rental application, the landlord was asking them for additional personal information which they were not willing to provide. The tenant stated because of this she no longer had confidants in the landlord's ability and was no longer willing to rent the premises from him. The tenants seek the return of the security deposit in the amount of \$675.00.

The landlord argued that he was able to perform the credit reports without the additional information being provided by the tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case each party has the burden of proof to prove their respective claim.

Section 20(a) of the *Residential Tenancy Act* states a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

In this case, the landlord's rental application states a security deposit must be included with their rental application. I find the landlord has breached the Act, by collecting a security deposit prior to entering into a tenancy agreement.

Further, I find the tenants had the right during the time the landlord was conducting the credit reports to reconsider their application for tenancy. A rental application is not a tenancy agreement.

Even if I accept the landlord suffered a loss of rent for July 2014 that loss was from the landlord stopping the interview process with other potential renters.

I find the landlord has failed to prove a violation of the Act, by the tenants. Therefore, I dismiss the landlord's application to retain the security deposit. As the landlord was not successful with their application they are not entitled to recover the filing fee.

In light of the above, I find the tenants are entitled to recover their security deposit in the amount of **\$675.00**. As the tenants were successful with their application they are entitled to recover the filing fee from the landlord.

I find that the tenants have established a total monetary claim of **\$725.00** comprised of the above described amount and the \$50.00 fee paid for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application to retain the security deposit is dismissed.

The tenants are granted a monetary order as stated above.

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: November 28, 2014

Residential Tenancy Branch

