



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of their security deposit. Both parties were represented at the hearing, with both tenants being represented by DF and both landlords being represented by JR. Where I refer to the tenants in the singular form, it is DF to whom I refer and where I refer to the landlords in the singular form, it is JR to whom I refer as these are the parties who provided testimony at the hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 11, 2011 and ended on March 31, 2014. They further agreed that the tenants paid a \$600.00 security deposit on June 2, 2011 and an additional \$100.00 at a later date. They further agreed that the landlords returned to the tenants \$550.00 at the end of the tenancy.

The tenants seek an order compelling the landlords to return the additional \$100.00 they paid. The tenancy agreement notes a payment of a \$700.00 security deposit and beside that entry, notes: "600 ½ month rent 100 move in fee". The tenancy agreement also states "4. Renter pays move in/out fee". The landlord testified that the property is part of a strata in which a \$100.00 fee is charged for moving in and moving out. He testified that his practice is to have all of his tenants sign a Form K, which is required under the *Strata Property Act* and advises tenants that they are bound by strata rules and liable for fines in the event of a breach. He testified that the tenants signed a Form K and that the \$100.00 fee he collected was to pay the move in fee.

The tenant testified that he did not understand that the fee was not refundable. He testified that he does not recall signing a Form K, but acknowledged that he may have done so.

The tenants seek the return of \$50.00 which the landlords withheld from the security deposit. The landlord testified that the tenants paid their rent late in the month of January and therefore he charged them a \$50.00 fee pursuant to the following term of the tenancy agreement: "2.

NSF cheques \$50 per occurrence [*sic*]. The tenant argued that a late payment is not equivalent to an NSF charge.

The tenants also seek to recover the \$50.00 filing fee paid to bring their application.

Analysis

I find that the additional \$100.00 paid by the tenants was a non-refundable fee which the landlord was entitled to charge. I find that the tenants agreed to this fee in their tenancy agreement, even though they do not recall this agreement and believed at the time the fee was non-refundable. Although it would be a good practice for the landlord to explain to tenants that the fee is non-refundable, I find that the tenants should have known as it was called a “fee” rather than a “deposit.” I dismiss the tenants’ claim for recovery of this fee.

Although the tenants agreed to pay a \$50.00 charge for NSF cheques, I find that the landlord was not legally entitled to include this term in their tenancy agreement as the Residential Tenancy Regulations restrict such fees to \$25.00. I further find that a late payment is not equivalent to an NSF cheque. If the landlord wishes to collect a fee for late payments, the Regulations permit him to include a specific term in the tenancy charging no more than \$25.00. I therefore find that the landlord must return to the tenants the \$50.00 fee he wrongfully withheld.

At the hearing, the tenant specifically stated that the only payment sought from the landlord was the return of these fees. I therefore have not considered applying section 38 of the Act.

As the tenants have succeeded in part of their claim, I find they should recover the filing fee paid to bring their application and I award them \$50.00 for a total entitlement for \$100.00. I order the landlords to pay this sum forthwith and I grant the tenants a monetary order under section 67 for \$100.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order for \$100.00.

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: May 12, 2015

