



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenants' security deposit?

Background and Evidence

The landlord filed this application on October 14, 2014. As of the date of the hearing the landlord has not submitted any documentary evidence in support of her application and she has not provided proof that the tenants were served with the application. The landlord testified at the hearing that she attempted to fax documents to the Residential Tenancy Branch a week or 10 days before the hearing. She said the fax process was unsuccessful because she could not connect with the Residential Tenancy Branch fax number. The landlord said she was delayed in filing evidence due to personal circumstances, including deaths in her family. The landlord did not attempt to deliver her evidence to the tenants. There is no indication that the landlord ever contacted the Residential Tenancy Branch concerning her difficulty in faxing evidence. The landlord claimed that she served the tenants with the application for dispute resolution and Notice of Hearing. The tenants testified that they were never served with the application or Notice of Hearing and they only learned of the landlord's application after they called the Residential Tenancy Branch in March to inquire about obtaining the return of their security deposit. They then learned that the landlord had filed an application and they received the hearing date and call-in particulars from the Residential Tenancy Branch.

I was advised during the hearing that the tenancy began in October, 2013 and the tenants paid a \$600.00 security deposit at the start of the tenancy. The rental unit is a strata title apartment in Surrey. In the application for dispute resolution the landlord claimed as follows:

Damage to the laminate floor requiring repair as opposed to replacement. Still obtaining quotes for best possible pricing. Not sure when the damage occurred? First noticed by the realtor when showing the suite which is listed for sale. There was no damage to the laminate at the start of the tenancy.
During the month of Sept. Damage noticed by realtor (reproduced as written)

The landlord said that she did have the floor repaired and had an invoice for the work; the amount was less than the security deposit that she holds. The landlord requested an adjournment to provide her evidence.

The tenants did not agree that they caused or were responsible for any damage to the rental unit and they did not agree that the landlord was entitled to a monetary award in any amount. They requested the dismissal of the landlord's claim.

Analysis

The landlord has not provided evidence to establish on a balance of probabilities that she is entitled to a monetary award, or to retain any part of the security deposit that she holds. The tenants were unwilling to consent to an adjournment and I find that the landlord has had ample time to prepare and submit evidence. I decline to grant an adjournment of the hearing. In the absence of sufficient evidence to establish that the tenants damaged the flooring or to establish the cost of repairs, the landlord's application is dismissed without leave to reapply.

Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in satisfaction of her monetary claim. Because the claim has been dismissed in its entirety without leave to reapply, it is appropriate that I order the return of the tenants' security deposit; I so order and I grant the tenants a monetary order in the amount of \$600.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: June 02, 2015

Residential Tenancy Branch

