



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in relation to the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not, although I waited until 1456 in order to enable the landlord to connect with this teleconference hearing scheduled for 1430.

Disposition of Landlord's Claim

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the application dismissed without leave to reapply.

Prior Application

The tenant brought a prior application for return of her security deposit. The file number for that application is listed on the covering page to this decision. The tenant's application was scheduled to be heard 27 October 2015.

The tenant did not attend the hearing at the appointed time; however, the landlord did attend that hearing. On the basis that the tenant did not provide evidence or submissions in support of her application, the tenant's application was dismissed without leave to reapply.

Issue to be Decided: Who Gets to Keep the Security Deposit?

In this situation, the tenant cannot bring a further application for return of her security deposit as she is procedurally barred by the prior application; however, the landlord does not have an order authorizing the retention of the amount and is now procedurally barred from reapplying.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" (Guideline 17) provides guidance in this situation:

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.

I must consider whether the tenant is entitled to return of the security deposit in accordance with Guideline 17.

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all details of the submissions and / or arguments are reproduced here. The principal aspects and my findings around each are set out below.

Prior to 27 April 2015, the tenant made an online application to the landlord. The tenant provided me with a copy of the landlord's online application; there is nothing that

indicates that the landlord will seek automatically to retain the tenant's security deposit. In the even the tenant cancels her application

On 27 April 2015, the tenant attended at the landlord's office and was told that she needed to fill out a second application form. The tenant testified that she was irritated she had to complete a second form. The tenant testified that she did not read the fine print.

The fine print on the copies of the application provided by both the landlord and tenant are of poor quality and difficult to read. With the tenant's assistance I was able to read the following:

This offer is subject to acceptance by the Landlord or its Nominee and is open for acceptance until 5:00pm on the fifth day following the date of this application. ... Cancellation after the fifth (5th) day will result in forfeiture of the applicant's deposit. ...

On 27 April 2015, the tenant provided a security deposit in the amount of \$477.50 to the landlord.

The tenant testified that she emailed the landlord on or about 1 June 2015 to inform the landlord that she would not be moving into the rental unit.

The parties never entered into a written tenancy agreement. The tenant testified that she was going to meet with the landlord's representatives on or about 17 or 18 June 2015 for the purposes of signing the tenancy agreement.

Analysis

Subsections 38(3) and 38(4) of the Act set out the circumstances under which a landlord may retain an amount from the tenant's security deposit. The only deductions permitted from a security deposit are those agreed to in writing by the tenant at the end of the tenancy or those ordered by the Residential Tenancy Branch.

There are no prior monetary orders issued by this Branch. The tenant did not authorize any deduction in writing.

The landlord had notice that this application was occurring and could have elected to either cancel the hearing before it occurred or appear on the day to withdraw the application. The landlord did not cancel the hearing or withdraw its application. In

addition, I have serious concerns that the landlord's application has merit in light of section 20 of the Act.

Guideline 17 is publically available and clearly establishes that, on application by the landlord to retain any part of the security deposit, an arbitrator will order return of the balance to the tenant whether or not there is an application by the tenant before that arbitrator.

I have two parties that are procedurally barred from seeking an order through their own application through their own failures to attend their own hearings in respect of their own applications. Neither application was heard on its merits. This odd set of circumstances could have been avoided had the parties attended the hearings as scheduled; however, these are not the circumstances that exist.

There is no evidence before me that indicates that the tenants' right to the security deposit has been extinguished. I find that in this case, the published policy of the Branch as set out in Guideline 17 allows me order return of the balance of the tenant's security deposit. As there is a balance in the amount of \$477.50, I order that the balance of the tenant's security deposit shall be returned to the tenants forthwith.

Conclusion

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: December 09, 2015

Residential Tenancy Branch

