



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought return of the security deposit and to recover the filing fee.

Both parties appeared at the hearing. The Tenant appeared on her own behalf and S.D. appeared on behalf of the Landlords. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. What should happen with the Tenant's security deposit?
2. Should the Tenant recover the \$50.00 filing fee?

Background and Evidence

The Tenant provided a copy of the Residential Tenancy Agreement in evidence; however, only pages 1, 4, 5, and 6 were included. The Tenant testified that the tenancy was for a one year fixed term tenancy began February 15, 2014 which is confirmed by the Form K which is attached to the tenancy agreement.

The Tenant gave written notice to end the tenancy effective on August 31, 2014. The Tenant introduced in evidence her letter to the Landlord dated June 4, 2014 in which she writes:

"... This letter is to formalize notice that we are terminating our lease, effective Aug 31, 2014 and agree to forfeit our deposit..."

The Tenant stated that she now sought to recover the security deposit because the Landlord did not incur any losses as he rented out the unit immediately after they vacated. She further noted that a mutual agreement to end the tenancy was reached such that they agreed to vacate the rental unit earlier, on June 30, 2014. She testified that the new renters moved in on or before June 30, 2014 such that the Landlord did not incur any loss and therefore should not be permitted to retain the deposit.

The Landlord testified that there were no discussions with the Tenant with respect to the letter as it was "very black and white" in that they agreed to forfeit their deposit. He also stated that there was no communication from the Tenant that her offer was contingent on the Landlord actually suffering a loss.

Analysis

Section 38 of the *Residential Tenancy Act* reads as follows:

Return of security deposit and pet damage deposit

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

In this case, I find, pursuant to section 38 (4)(a), that the Tenant agreed in writing that the Landlords could retain the security deposit. Her agreement was clearly noted in her letter of June 4, 2014 as was not contingent on the occurrence of any events. She did not indicate in writing that this offer was contingent on the Landlords suffering a financial loss. Further, I accept the Landlord's evidence that the Tenant did not, in any discussions with the Landlords, communicate that her offer was subject to the Landlords suffering a financial loss. While the Tenant may now believe the Landlord was not entitled to these sums, this does not negate her communication of June 4, 2014.

The Tenant's Application is dismissed. Having been unsuccessful, her request to recover the filing fee is similarly dismissed.

Conclusion

The Tenant agreed in writing that the Landlords could retain the security deposit. Pursuant to section 38(4) of the *Act*, her application for return of the security deposit and recovery of the filing fee is dismissed.

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: January 27, 2016

Residential Tenancy Branch

