



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: MNDC MNSD FF

Introduction:

Both parties attended the hearing and confirmed receipt of the Application for Dispute Resolution and the tenant's Notice to End the tenancy on March 10, 2016. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for terminating the lease;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord entitled to keep the tenant's security deposit and to recover filing fees?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenant signed an Application for Tenancy on March 3, 2016 for a tenancy to commence on April 15, 2016. She also signed the tenancy agreement on March 3, 2016 for a tenancy commencing April 15, 2016 and expiring October 31, 2016 and paid a security deposit of \$875. She decided they did not want to move into the property and delivered a letter ending the tenancy. The letter was dated March 10, 2016 and the landlord said they got it the same day.

In the Application for Tenancy, a box at the bottom states, "Acceptance of Terms and Conditions". It states in part that the offer is open for acceptance by the landlord until 6 p.m. on the 5th day following the date of the Application. It provides, "Should we cancel prior to the date of acceptance, then we agree that \$50 will be retained as liquidated damages for processing this application. Cancellation after the fifth (5th) day will result in forfeiture of the applicant's deposit". The landlord relies on this clause to retain the tenants' security deposit for they say the tenant cancelled 7 days after signing the application.

In evidence are copies of the Application, the lease, the tenant's notice to cancel the tenancy, express post receipts and the receipt for the security deposit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Section 20(e) of the Act provides the landlord must not (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit...at the end of the tenancy agreement.

Section 5 of the Act states that landlords and tenants cannot contract out of the Act and any attempt to do so is of no effect.

Based on these sections, I find the landlord's clause in their Application for Tenancy is of no effect when it refers to retaining the tenant's security deposit. Furthermore, I find section 45 of the Act provides that a tenant may end a periodic tenancy by providing one month's notice. I find in this case that the tenant provided a full month's notice of her cancellation of the lease. I find insufficient evidence that the landlord was unable to re-rent the unit. Therefore I find the tenant does not owe rent to the landlord.

Section 38 of the Act states the landlord must return the tenant's security deposit within 15 days of the later of the date they vacate and provide their forwarding address in writing. If the landlord does not return the deposit or make an Application to claim against it within the 15 days, the tenant is entitled to claim double the deposit refunded. In this case, the tenants never moved in and they provided their forwarding address in writing to the landlord on March 10, 2016. The landlord made their Application on March 11, 2016 which is well within the 15 days allowed to avoid the doubling provision. I find the tenant entitled to the return of their original security deposit.

Conclusion:

I dismiss the application of the landlord in its entirety without leave to reapply and I find they are not entitled to recover filing fees for this application due to lack of success.

I find the tenant entitled to a monetary order for \$875.00 (enclosed) for the refund of their security deposit.

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: July 20, 2016

Residential Tenancy Branch

