



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMACON PROPERTY MANAGEMENT SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord was represented by an agent.

The tenant acknowledged receipt of evidence submitted by the landlord. The tenant testified that he did not serve the landlord with his evidence package. Accordingly the tenant's evidence was not used in the making of this decision. Both parties gave affirmed testimony.

Issue to be Decided

Did the tenant pay a security deposit? If so, is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the filing fee?

Background and Evidence

As per the tenancy agreement filed into evidence by the landlord, the tenancy started on July 01, 2013. The tenancy ended on July 03, 2016. The only tenant named on the tenancy agreement is the applicant. The monthly rent is \$725.00 payable on the first of each month. The tenancy agreement also states that no deposit was paid. The tenant agreed that he signed this tenancy agreement. The rental unit consists of an apartment in a building that houses other apartments.

The tenant stated that his mother moved into the dispute rental unit in June 2009 and at that time she paid a deposit of \$369.50. The tenant stated that his brother shared the unit with his mother and when his brother moved out, he moved into the rental unit.

On July 01, 2013, the tenant entered into a tenancy agreement with the landlord for the rental of this unit. He stated that his mother was not in town and that is why her name does not appear on the tenancy agreement. The tenant also stated that since his mother had already paid a security deposit for this rental unit, none was paid when he signed the new tenancy agreement.

It is undisputed that the current owners of the rental unit purchased the property in April 2015. The landlord stated that the former owner turned over all the tenancy agreements to the landlord/current owner. The landlord stated that according to the records received from the previous owner, there are a few rental units in the building that did not pay security deposits and accordingly security deposits for these units, were not received by the current landlord, in the statement of adjustments, at the time of the sale of the property. The landlord stated that this tenant was one of those tenants that he did not receive a security deposit for.

Analysis

In this case, the landlord maintains that as per the tenancy agreement, the tenant did not pay a security deposit and that a deposit was not received by this landlord for this rental unit, during the transfer of the property, following the sale of the property. The landlord states that the tenant is therefore not entitled to the return of a deposit he had not paid.

The tenant states that his mother paid the security deposit at the start of her tenancy in 2009 and that the deposit was applied to this tenancy. The tenant stated that his mother never moved out of the rental unit. It is not clear why the parties entered into a subsequent tenancy agreement on July 01, 2013, if the tenant's mother never moved out of the rental unit. It is also not clear why the tenant's mother is not named on the tenancy agreement, if she was the original tenant who had not moved out.

The tenant testified that the security deposit was transferred over to the new agreement. He also stated that he signed the agreement acknowledging that no deposit was paid. The tenancy agreement does not indicate that the deposit was transferred over from a prior tenancy agreement.

The tenant also stated that his evidence contains a tenancy agreement showing that his mother paid a deposit in 2009 to the previous landlord for the same apartment. However since the tenant did not serve the landlord with his evidence, I am unable to use his evidence in the making of this decision.

Even if I was able to use the tenant's evidence, it does not prove that a deposit was paid to the landlord by transfer from a previous tenancy, on behalf of the tenant for his tenancy that started July 01, 2013.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Based on the evidence filed by both parties and the verbal testimony during the hearing, I find on a balance of probabilities that it is more likely than not that this landlord did not receive a security deposit from the tenant or from the previous owner on behalf of the tenant and therefore I find that the tenant is not entitled to the return of the security deposit. Accordingly the tenant's application is dismissed. The tenant must bear the cost of filing his application.

If the tenant's mother paid a deposit for her tenancy, then she is at liberty to file her own application for the return of the deposit against the landlord she paid it to.

Conclusion

The tenant's application is dismissed in its entirety.

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 20, 2017

Residential Tenancy Branch