



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), for return of all or part of the security deposit and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to return of all or part of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on November 30, 2012. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants paid a security deposit of \$745.00. The tenancy ended on July 1, 2016.

The security deposit at the end of the tenant incurred interest of \$12.64. The landlord returned to the tenants the amount of \$484.25 leaving the amount of \$273.39 in their trust.

The tenants claim as follows:

a.	Return of balance of security deposit	\$273.39
b.	Filing fee	\$100.00
	Total claimed	\$373.39

The tenant testified that the landlord failed to return the full amount of their security deposit and seek the return of the balance owed in the amount of \$273.39.

The landlord's agent testified that the parties agreed that the tenants owed the landlord the amount of \$273.39, for overholding and cleaning the premises. The agent stated that the correspondence between the parties supports the landlord's position that the landlord had the tenants consent.

The tenant responded that they did agree that they owed the landlord the amount of \$273.39; however they did not agree that the landlord could retain this amount from the security deposit. The tenant stated that in their email dated July 11, 2016, they requested the remainder of their security deposit be paid to them and they would drop off a cheque for the amount they owed the landlord.

The tenant stated because the landlord failed to provide them with a copy of the condition inspection report that they were obligated to return the security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the onus to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I have review the email correspondence between the parties.

While, I accept the tenant writes in their email of July 11, 2016, that they want the landlord to send the balance owing of the security deposit and they would drop off a cheque for the amount they owed the landlord ; however, in the landlord's email reply they were not agreeable to this.

On July 12, 2016, the landlord writes to the tenant that they have asked their staff to file their claim with the Residential Tenancy Branch. The tenant replied that this is unnecessary as they have agreed to pay for all the points discussed. The landlord further replied that they will arrange for a cheque to be sent, which they did for the difference.

In this case, the tenant agreed they owed the landlord the amount of \$273.39. This amount included money owed to the landlord for overholding the premises, that is not considered damages to the unit ; rather unpaid rent.

The landlord had the right to make an application for overholding the premises and to retain the entire security deposit until the matter was decided upon. Any damages also found to be owed or agreed upon would be offset at the hearing.

It was the tenants action of informing the landlord that they did not want to go to arbitration since they consent to the amount owed. The landlord did not file for arbitration as they relied upon the action of the tenants. The only guaranteed method to the landlord to ensure payment of the amount owed by the tenants was to retain it from the security deposit, which I find to be reasonable.

Further, I find the tenants' position that each party should exchange cheques unreasonable as there is no benefit to either party by doing so, if both parties had the intent to pay the other party at the time.

Furthermore, I find the tenants did not suffer a loss, as they were in the same position whether or not they exchanged cheques since there was no further amount owed by either party.

I find the tenants have failed to prove a violation of the Act by the landlord and a corresponding loss. Therefore, I dismiss the tenants' application without leave to reapply. Since the tenants were not successful with their claim they are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application 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: February 07, 2017

Residential Tenancy Branch