



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to retain a portion of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlords. No one was in attendance on behalf of the tenant.

The landlords submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on November 7, 2016. Canada Post tracking information was submitted in the landlord's evidence that shows the tenant accepted and signed for the notice of hearing package on November 10, 2016. Based on the submissions of the landlords, I find the tenant was served notice of this proceeding in accordance of Section 89 of the Act on November 10, 2016, therefore, I continued in the absence of the tenant.

Issue to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's testimony is as follows. The landlords testified that they purchased the property and took possession of it on March 1, 2016. The landlord testified that the tenant was already residing there and is unsure as to when he moved in. The landlord testified that the tenant moved out on October 17, 2016. The tenants were obligated to pay \$1550.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$775.00 security deposit and a \$775.00 pet deposit. The landlords testified that the tenant continually parked in the visitor parking spot. The landlords testified that the strata council fined the landlord \$200.00 on four separate occasions because of the tenants' actions. The landlords testified that they returned

\$750.00 of the deposits to the tenant after receiving his forwarding address. The landlords testified that the tenant was very angry that they did this without his permission and denied any wrongdoing. The landlords testified that they seek an order from the Branch allowing them to retain the \$800.00 that they hold and the recovery of the \$100.00 filing fee.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord testified that they had no idea as to what a Form K was and whether the tenant had signed a Form K acknowledging and agreeing to follow the strata bylaws. In addition, in the landlords own documentation; an email thread, the tenant denies that he owns the vehicle parked in the stall. Based on some disputing evidence, and in the absence of a signed Form K document to illustrate that the tenant was made aware of all bylaws, rules and regulations of the complex or a tenancy agreement with an addendum of same, I find that the landlords have failed to satisfy me that they have provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the *Act*. Based on the insufficient evidence before me, I must dismiss this application in its entirety.

Conclusion

The landlords' application is dismissed. I order that the landlord return the remaining \$800.00 security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$800.00. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 09, 2017

Residential Tenancy Branch