



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application brought by the Landlord(s) requesting a monetary order to retain the full security deposit of \$400.00, and requesting recovery of the \$100.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on December 9, 2016; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the landlord has the right to retain the security deposit for damages.

Background and Evidence

Applicant testified this tenancy began on April 24, 2013 and ended on January 25, 2060.

The applicant further testified that, at the beginning of the tenancy, no move-in inspection report was completed.

The applicant further testified that at the end of the tenancy the tenant refused to participate in a move-out inspection report.

The applicant stated that they want to retain the full security deposit of \$400.00 to cover damages caused during the tenancy.

Analysis

Sections 23 and 24 of the Residential Tenancy Act state:

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
- 24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord (*my emphasis*)

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. (*my emphasis*)

Therefore, in this case, since the landlord did not do a move-in inspection report, the landlords right to claim against the security deposit has been extinguished.

Pursuant to section 62 of the Residential Tenancy Act I dismiss this application to retain the security deposit and I order the landlords to return the full security deposit to the respondent.

I further order that the applicants bear the cost of the filing fee.

Conclusion

This application has been dismissed in full, and I have issued a monetary order for the landlord to pay \$400.00 to the tenant for the return of the 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: June 05, 2017

Residential Tenancy Branch