



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANNAE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNSD MNDC FF
Landlord: MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties. The tenant filed their application on May 05, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for damage / loss – Section 67
3. An Order to recover the filing fee for this application - Section 72.

The landlord filed their application on April 26, 2017 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving the other's application and all the evidence of the other sent to this proceeding. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Was a tenancy agreement established in this matter?
Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The *relevant* evidence in this matter is as follows. The parties acknowledged the tenant applicant in this matter completed portions of the landlord's Application for Tenancy document. The landlord argued their document also operates as a Tenancy Agreement upon the landlord's acceptance of the application. The tenant argued they did not enter into nor signed a Tenancy Agreement as may have been contemplated; and viewed the landlord's Application document solely for the landlord's consideration whether to accept them as tenants and if accepted enter into a tenancy agreement. The parties agreed they did not complete and mutually sign a tenancy agreement document as may have been contemplated. The parties disagreed in respect to establishing an oral agreement for tenancy.

The parties agreed that on March 29, 2017 the landlord received from the *tenant applicant* (the tenant) an Application for Tenancy document dated March 28, 2017, which included the intended rental unit address, the amount payable for rent, their rental history, and a cheque for \$675.00. The parties agreed the desired tenancy start date as April 15, 2017. The landlord argued \$675.00 was requested as the security deposit for the tenancy upon acceptance of the prospective tenants and establishment of a tenancy agreement. The tenant described the \$675.00 as a confusing charge however somehow related to processing the application and holding the rental unit until the landlord's determination and the parties mutually arriving at agreement of a tenancy. The landlord provided evidence of the Application for Tenancy document states that if accepted the, "Applicant will pay a security deposit of \$675 to the Landlord." – *as written*. The tenant provided evidence of their negotiated cheque itemizing it as "Rental Application Deposit".

On March 31, 2017 the landlord informed the tenant their application was successful whilst the tenant informed the landlord they chose alternate accommodations and sought return of their \$675.00 cheque. The landlord informed the tenant they had deposited their cheque and were retaining the proceeds as damages for a prospective loss of revenue for April 15 – 30, 2017 as the tenant failed to enter into a tenancy agreement. The landlord testified they believed the rental unit was re-listed on Craigslist resulting in a written tenancy agreement starting May 01, 2017 which the landlord submitted into evidence. The landlord provided testimony about efforts which were unsuccessful towards renting the subject unit for April 15, 2017.

The tenant seeks return of their \$675.00 and the landlord seeks to retain same as loss for a claimed breach of the tenancy agreement for the period of April 15 – 30, 2017.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find that the Residential Tenancy Act applies to rental units. As such it applies to this matter.

I find **Section 1 Definitions** of the Act effectively defines a *security deposit* as “money paid by a tenant” – *not a prospective tenant*. I find this supports that a tenancy agreement establishing an applicant as a tenant precedes collection of a security deposit.

I find that **Section 15** states,

Application and processing fees prohibited

15 A landlord must not charge a person anything for

- (a) accepting an application for a tenancy,
- (b) processing the application,
- (c) investigating the applicant's suitability as a tenant, or
- (d) accepting the person as a tenant.

I find **Section 16** of the Act states that the rights and obligations of a landlord and a tenant under a *tenancy agreement* take effect on the date the *tenancy agreement* is entered into, whether or not the tenant ever occupies the rental unit. I find that this strongly supports that a tenancy is created by the entering into a tenancy agreement, not completion of an application to rent with payment of a conditional deposit.

I find **Section 17** describes a security deposit as a condition of first entering into a *tenancy agreement* or as a term of a *tenancy agreement*.

Further, I find **Section 20** states that a landlord must not require payment of a security deposit at any time other than when the landlord and tenant enter into the *tenancy agreement*. I find this strongly supports that a tenancy agreement precedes collection of a security deposit.

It must also be noted that the landlord's Application document is not signed by them and states for them to only do so if they, “decide to accept the Applicant(s) as your tenant(s)” – *as written*. I find this supports the landlord's process regarded the tenant of this matter as an applicant, and not as a tenant.

Tenant's claim

On preponderance of the available evidence I find the tenant provided the landlord with particulars for the landlord's consideration. I find that in this matter the landlord's application document cannot operate to impose an agreement for tenancy. But moreover, I find no evidence of written or oral *agreement* arrived by the parties toward a tenancy, therefore no Tenancy Agreement or a tenancy to which a security deposit could be applied. As a result, I find the tenant did not provide a *security deposit* as contemplated in the Act. Rather, I prefer the tenant's evidence their payment to the landlord was a "Rental Application Deposit", which is not a charge or fee permitted by the Act. I accept that the tenant's payment can best be described as a deposit of good faith moving forward.

I find the conditions prescribed in **Section 38** of the Act respecting security and pet damage deposits do not apply to the referenced payment in this matter.

Effectively, I find the landlord holds \$675.00 which is not a deposit permitted under the Act or a deposit the Act permits them to retain in trust.

Landlord's claim

In this matter the burden of proving claims of loss or damage rests on the claimant (landlord) who must establish, on a balance of probabilities that they have suffered a loss due to the tenant's neglect, or failure to comply with the Act. And, if so established, did the landlord take reasonable steps to mitigate or minimize the loss? **Section 7** of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the landlord has not proven a loss resulting from a breach of the Act or Tenancy Agreement by the tenant. Even if I were to accept the landlord's premise of the existence of a tenancy, I find the landlord has failed to provide sufficient evidence proving they took reasonable steps to minimize their claim in this matter as prescribed by Section 7(2) above.

As a result of all the above, I must dismiss the landlord's application for damages or loss. And as further result it is only appropriate that I return to the tenant the \$675.00 in dispute. The tenant is also entitled to recover their filing fee from the landlord of \$100.00 for a sum award to the tenant in the amount of **\$775.00**.

Conclusion

The tenant's application is granted, and the landlord's application is dismissed.

I grant the tenant an **Order** under Section 67 of the Act for the amount of **\$775.00**. If necessary the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: October 11, 2017

Residential Tenancy Branch