



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of the security deposit and to recover 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.

Issue to be Decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenant completed an application for rental of the premises, at that time the landlord took a security deposit of \$800.00, which was to be held until the tenant's application for tenancy was approved.

The application for tenancy at the very bottom and in small print states that if the application is approved and the tenant does not enter into a tenancy agreement then in addition to any other right to damages the landlord may have, each applicant agrees and acknowledges that the contract deposit may be forfeited to the landlord.

The tenant testified that they filed out the application for tenancy and was required to give the landlord a cheque for the security deposit. The tenant stated that they informed the landlord after they made their application, if it could be held for a day or two as they were still considering their options as to whether they had to move from their current resident.

The tenant testified that they informed the landlord shortly after that they were not going to move into the premises. The tenant stated they never entered into a signed tenancy agreement with the landlord; however, the landlord cashed their cheque for the security deposit.

The tenant testified that they gave the landlord their forwarding address in an email on April 30, 2019, when they told the landlord that they would not be moving into the premises.

The tenant testified that a further request for the return of the security was made in writing by their advocate in a letter dated June 5, 2019, and a forwarding address was given in the letter.

Counsel submits it is the landlord's position that the money was initially to be used to hold the premises, and the would be applied as a security deposit once the tenants' application was approved, which is was; however, since the tenants backed out of the application to rent the premises, the contract states that money paid would be forfeited as a breach of contract as stated in the rental application.

Counsel submits that the application for rent, constitutes a tenancy agreement as there was consideration and money exchanged.

Analysis

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

Section 5 of the Act states, this Act cannot be avoided

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 15 of the Act 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

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant gave the landlord a cheque on April 23, 2019, that was to be held as security deposit, while the tenant's application was being processed for approval. The tenants informed the landlord on April 28, 2019, to hold their application; however, the tenants were informed that their application had been approved and their cheque had been deposit.

In this case, the landlords claim it was a contract fee to hold the premise for the tenant and not returnable if the tenant did not enter into a tenancy agreement.

I find the landlord's action is unreasonable and contrary to the Act as the landlord cannot accept anything for the tenant filing an application for a tenancy.

Further, the tenant had no choice, but to give the landlord a cheque when submitting their application, and the cheque was deposited as soon as their application was approved. I find that unreasonable as they have not entered in to a formal written tenancy agreement which is a requirement of the Act. An application for tenancy is not a tenancy agreement.

Furthermore, it says in the landlord's application to rent, that the security deposit is due to the landlord by the term of the commencement date, not when their application is made.

I find the landlord had no right to require the tenant to pay a deposit at the time the tenant filed an application for tenancy. I further find the landlord did not have the right to deposit the cheque simply because the application was approved. The landlord is required to approve an application for tenancy prior to any money being exchanged and then enter into a formal written tenancy agreement at which time the security deposit can be collected.

I find the landlord breached section 15 and 38 of the Act, as they had no legal authority to keep the tenant's security deposit, simply because they felt entitled to do so. The landlord was given the tenant's forwarding address on April 30, 2019 and again later in a letter written on June 5, 2019, by the tenant's advocate, which was confirmed received at the hearing.

The tenant's security deposit was not returned within 15 days, nor did the landlord make an application claiming against the security deposit. Therefore, I must order, pursuant to section 38(6) of the Act, that the landlord pay the tenant the sum of **\$1,700.00**, comprised of double the security deposit (\$800.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small

claims division of the Provincial Court and enforced as an order of that court. The landlord **is cautioned** that costs of such enforcement are recoverable from the landlord.

I caution the landlord that they must not collect any money from tenants simply for completing a rental application. The landlord is cautioned that they could be subject to an administrative penalty up to \$5,000.00 for each breach, if they continue to breach section 15 and 38 of the Act.

Conclusion

The tenant's application for return of their security deposit is granted.

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 21, 2019

Residential Tenancy Branch