Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The tenants apply to recover a $1250.00 payment made to the landlord prior to entering into tenancy negotiations; negotiations that ultimately fell through. They also seek $360.00 as damages for three hours of work preparing this application.

The landlord, or prospective landlord, is a management company. Neither of the two individuals the tenants have named in their application are or were going to be the tenants' landlord. The management company has therefore been added by me as a party. The respondent Mr. D.A. is an employee of the management company. The respondent Mr. C.P. (who did not attend) is the owner of the property.

Mr. D.A. for the landlord indicated a desire to pursue a counterclaim at this hearing. It was explained that the *Residential Tenancy Act* (the "*Act*") and Rules do not provide for counterclaims and that in order to pursue the landlord's claim it must bring its own application for dispute resolution.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Are the tenants entitled to recover the $1250.00 or damages for time spent bringing the application?

Background and Evidence

The rental unit is the main floor of a house. The tenants answered an add. They contacted the management company and, they say, paid $1250.00 for the company to "remove the listing."

They thereafter received from the management company a proposed tenancy agreement. They had had two previous tenancy agreements with the management company for other rental units with different owners but this tenancy agreement proposed terms not in the prior agreements and which the tenants were not inclined to accept. They withdrew their request to rent the unit.

It's their view that the $1250.00 money was paid to have the landlord take down the ad and that, in fact, the ad was never taken down.

Mr. D.A. for the landlord testifies that the $1250.00 was in the nature of a security deposit. He says that the landlord did take down the ad. He is sceptical that it was the additional terms of the proposed tenancy agreement that caused the tenants to back away. The parties carried on discussions after the proposed agreement had been sent to the tenants, including discussions about early possession.

Mr. D.A. says that after the tenants backed out, he tried to find new tenants for the anticipate possession date of October 1, 2019 but the earliest tenants he could secure were for November 1, causing the landlord a loss of October rental income.

Analysis

While Mr. D.A. sees the tenants' money as a form of security deposit I cannot agree. Ultimately, the parties failed to reach an agreement. There was no tenancy agreement between them. Without a tenancy agreement there could be no "security deposit" within the meaning of those words found in the *Act*. Indeed, a landlord is obliged by s. 38 of the *Act* to account for deposit money after the end of a tenancy. In this case there was no end of the tenancy because it never started.

In my view, the landlord imposed the requirement of the $1250.00 payment and it was therefore the landlord's obligation to make clear what the payment was for. It did not. Mr. D.A. candidly acknowledged that had a tenancy agreement been struck the money would have certainly been applied to rent or the required security deposit.

In these circumstances I find the $1250.00 was in the nature of a show of good faith by the tenants and that it never became the landlord's money. There is no credible evidence of bad faith on the tenants' part. The tenants are entitled to its return.

I dismiss the tenants' claim for $360.00 for their time preparing the application. Such an award would be in the nature of an award for special costs and disbursements and an arbitrator's power to award costs and disbursements is limited to awarding recovery of the filing fee; which I do in this case.

Conclusion

The tenants will have a monetary award of $1250.00 plus the $100.00 filing fee. They will have a monetary order against the management company landlord in the amount of $1350.00.

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: January 21, 2020

Residential Tenancy Branch