



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, MNDCT

Introduction

The Applicants filed an Application for Dispute Resolution (the “Application”) on April 24, 2020 seeking to recover a security deposit as well as compensation for damages. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 18, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Both the Applicant and Respondents confirmed in the hearing that they received the prepared evidence of the other in advance. The hearing proceeded on this assurance.

Preliminary Issue

Both parties testified that the Applicant (here represented in the hearing by their agent) inquired on renting a unit at the dispute address. On March 11, 2020, the Respondents issued a receipt for a “Security Deposit” that the Applicant paid as a deposit for renting the unit. A receipt submitted as evidence states: “This immediate deposit will go towards the Security Deposit concerning the lease beginning September 1, 2020.”

The Applicant’s agent confirmed that no tenancy agreement was signed at the time the Applicant made their desire for a rental unit known by paying a deposit. The Applicant’s agent referred to this as a “reservation fee”. They stated the Applicant could not complete the “lease package” and decided to remove their application. The Respondents here made it known to the Applicant that the reservation fee was non-refundable.

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as a “reservation fee”. They stated the Applicant could not complete the “lease package” and decided to remove their application. The Respondents here made it known to the Applicant that the reservation fee was non-refundable. Messages from a “Lease Advisor” to the Applicant advise the “security deposit” is non-refundable. Additionally, the Applicant provided a document entitled “Security Deposit Receipt” dated March 11, 2020.

The Application and ‘Monetary Order Worksheet’ completed by the Applicant show: the initial \$500.00 to be refunded; and \$3,916.53. The latter amount is “administrative fees” one of which is prorated for each month of March through to September; and a “stress/lost time value of \$” amount. Invoices accompany the evidence; these show “Creation and organization of documents” for this hearing.

The Respondents provided a timeline evidence summary, and made the following points:

- they requested a \$500 deposit to reserve the Applicant’s request to rent a one-bedroom suite;
- the Applicant paid this deposit on March 9, 2020;
- both the signed agreement and receipt indicate the deposit is non-refundable;
- by March 19, 2020 the Applicant desired to cancel their request to rent;
- on March 24, 2020 the Respondent informed the Applicant that there was no lease agreement made;
- they made an offer to settle matter for \$1,000.00, this because a replacement tenant was found and “would be replacing the application” – the Applicant refused this offer.

In the hearing they reiterated that the \$500.00 was a “holding deposit” based on a separate agreement which can be described as a “holding agreement.” There was “no lease agreement or lease package completed at all”. Moreover, this “holding deposit” is always referred to as a “security deposit”. This is partly due to the fact that the lease advisor who originally interacted with the Applicant works from another province and is familiar with different terminology.

The *Act* section 2 sets out that it applies to “tenancy agreements, rental units, and other residential property.”

A “tenancy agreement” is defined in section 1 as “an agreement. . .between a landlord and a tenant respecting possession of a rental unit . . .”

The agreement made between the Applicant and Respondent was solely for the Applicant’s reservation of their request to rent a suite. There was an exchange of \$500.00 to secure that reservation spot. This application and exchange of a deposit is not a tenancy agreement. This

was the preliminary to an application process and no contractual promise was made, nor was it enshrined in a tenancy agreement.

There was commitment to terms of a tenancy application; however, this does not extend any further into a tenancy agreement. There was no exchange of rent respecting a possession of a rental unit; therefore, there was no implied oral agreement between the parties granting possession to the Applicant. Moreover, use of the term “security deposit” is not reflective of an agreement in place.

I find the documentary evidence and oral testimony shows there is no tenancy agreement – no contract – between the Applicant and the Respondent. In short, the provisions of the *Act* do not apply to the situation at hand. Based on these facts and an application of the legislation, I do not have jurisdiction to hear this Application.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 22, 2020

Residential Tenancy Branch