



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was scheduled to deal with a Tenant's Application for Dispute Resolution whereby the applicant was seeking return of a security deposit.

The applicant appeared at the hearing. The respondent was represented by the manager for the residential property, an apartment building. Both parties were given the opportunity to be heard and respond to the other party with respect to relevant matters.

Preliminary and Procedural Matters

1. Proper naming of respondent landlord

The applicant had named the respondent by what appears to be a business operating name or name of the apartment building, but not necessarily a legal entity. I explored this issue further. I heard from both parties that the property is owned by an individual and does business using an operating name. I amended the style of cause to correctly identify the respondent landlord as being the individual owner of the property and her operating name.

2. Service of hearing documents and evidence

I confirmed that the applicant sent her Application for Dispute Resolution and supporting materials to the owner of the property via registered mail. I heard from the manager that the owner forwarded the documents to the manager to deal with. As such, I was satisfied the owner was duly served with notification of this proceeding. I also confirmed that the manager sent documents to the applicant, in response, and the applicant received those materials. Accordingly, I admitted the documentation of both parties into evidence for consideration in making this decision.

3. Jurisdiction

Both the applicant and the manager testified that the manager collected a security deposit from the applicant in the amount of \$362.50 when a tenancy application was submitted by the applicant; however, the parties did not ever enter into a tenancy agreement. The respondent had provided a copy of the tenancy application and in the last section is space for the landlord to accept the applicant for a tenancy and this space was not signed by an agent for the landlord. I also heard consistent testimony that the respondent continues to hold the deposit in the landlord's bank account and did not refund the security deposit or made no claim against it.

My jurisdiction to resolve disputes is conveyed upon me by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act*. Accordingly, my authority to resolve disputes is limited to disputes between a landlord and tenant that have entered into a tenancy agreement.

Since both parties were of the position that they did not enter into a tenancy agreement with each other, I informed the parties that I do not have jurisdiction to resolve their dispute.

I cautioned the manager that under section 20(a) of the Act, a landlord must not require that a security deposit be paid except at the time that the tenancy agreement is entered into. This is also provided under Residential Tenancy Branch Policy Guidelines 17 and 29. Further, as provided under Policy Guideline 29, violations of the security deposit prohibitions are a basis for administrative penalty of up to \$5000.00 under section 90 of the Act.

As a courtesy to the parties, I suggested the parties try to reach a settlement agreement to avoid filing additional claims in another forum such as Civil Resolution Tribunal and I offered to record the settlement agreement they reached during the hearing. The parties indicated a willingness to resolve this matter to avoid further filings and the parties were successful in reaching an agreement that I record as follows:

1. The respondent shall refund the applicant the deposit of \$362.50 plus \$50.00 toward the filing fee the applicant paid for this application within 15 days by sending a cheque to the applicant's service address.
2. Upon satisfaction of term 1 above, the parties shall consider this matter resolved and will not file any claims against the other.

3. The applicant also requested the respondent return to her the original copies of university documents that were provided with her tenancy application. The respondent agreed to do so under a separate cover from the refund cheque.

Conclusion

The parties did not enter into a tenancy agreement and I do not have jurisdiction to resolve their dispute.

The parties did reach an agreement during the hearing with a view to resolving this matter without making any more filings in another forum. As a courtesy, I have recorded the agreement I heard in this decision.

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: March 19, 2021

Residential Tenancy Branch