



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FF

Introduction

This Hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order to retain the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the Hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Background and Evidence

On March 21, 2014 the Tenant gave the Landlord \$750.00 to hold the unit for May 1, 2014 occupancy. No written tenancy agreement was signed and the Landlord asked for the funds to hold the unit since another prospective tenant was also interested in the unit. On April 3, 2014 the Tenant informed the Landlord that he would not be moving into the unit. On April 4, 2014 the Tenant sent his address to the Landlord and asked for the return of the \$750.00. The Landlord rented the unit to another person starting May 1, 2014. The Landlord argues that since the Tenant did not take the unit the Landlord has a right to retain the monies given to hold the unit. The Landlord also claims rent for May 1, 2014. The quantum of the Landlord's claim is \$1,500.00 plus the filing fee of \$50.00.

Analysis

Section 6 of the Act provides that the rights and obligations under the Act are enforceable between a landlord and tenant under a tenancy agreement. Section 13 provides that a landlord must prepare in writing every tenancy agreement. Section 16 of the Act provides that rights and obligations take effect from the date the tenancy agreement is entered into. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

As there is no written tenancy agreement, I find it difficult to determine that a tenancy has been entered into. However even if an oral tenancy agreement were to be found, the Landlord has not provided any evidence of monetary loss under such an agreement. As the Landlord has not substantiated a loss, I dismiss the Landlord's application. As the Landlord has no right to the monies paid by the Tenant I order the Landlord to return \$750.00 forthwith to the Tenant.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$750.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 3, 2014

Residential Tenancy Branch

