



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding McCandu Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, 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 of Possession - Section 55;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord's evidence that each 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 Tenants did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing the Landlord stated that the Tenants moved out of the unit on January 31, 2015 and that the Landlord no longer requires an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 3, 2014 and ended on January 31, 2015. The Landlord collected \$450.00 as a security deposit on August 3, 2014 and \$450.00 as a pet deposit on September 7, 2014. The Landlord provided submissions on damages left to the unit

and claimed compensation for these damages. The application was not amended to add this claim. The Landlord also claims retention of the security deposits.

Analysis

Rule 2.11 of the Rules of Procedure provide that an application may only be amended without consent of the other party prior to the hearing. This rule also requires that the amendment must be clearly indicated and a copy of the amended application served on the responding party and the RTB in advance of the hearing. As the Landlord did not submit a clearly amended application before the hearing and as the Tenants have not appeared and have no notice of any amendment, I dismiss the Landlord's claim to damages to the unit with leave to reapply.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Landlord prematurely claimed the security deposit prior to the end of the tenancy, I dismiss this claim with leave to reapply. As the Landlord's application otherwise had merit in relation to the order of possession although no longer being sought, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee and I order the Landlord to deduct this amount form the security deposit of \$450.00 plus zero interest.

Conclusion

I order the Landlord to deduct \$50.00 from the security deposit of \$450.00 in full satisfaction of the claim.

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: February 03, 2015

