



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for the cost of cleaning, painting, the filing fee and for the loss of income. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The landlord did not attend the hearing. The tenant attended the hearing. Since the landlord is the applicant and did not attend the hearing, his application is dismissed without leave to reapply.

Issues to be decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy started on August 01, 2013 and ended on July 31, 2015. The tenant testified that the landlord had in his possession a security deposit of \$550.00 and a fob deposit of \$100.00 and made a request for the return of his deposits.

The hearing was scheduled to start at 12:00 noon. The lines remained open until 12:10pm. The landlord did not join the conference call.

Analysis

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

It is up to me to make a determination on the extinguishment of the tenant's right to the return of the security deposit. Since the landlord did not attend the hearing to present his case, I am unable to determine whether the landlord complied with section 23(3) (two opportunities for inspection). Therefore I find that the landlord has not proven that the tenant's rights to the return of the deposit have been extinguished.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord did not attend the hearing and therefore has not established a claim against the security deposit (\$550.00) and fob deposits (\$100.00), it is appropriate that I order the return of the tenant's security deposit and fob deposit.

I so order and I grant the tenant a monetary order in the amount of \$650.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of **\$660.00**.

The landlord's application is dismissed 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 *Residential Tenancy Act*.

Dated: February 05, 2016

Residential Tenancy Branch

