

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security and pet deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on June 2, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the hearing documents on June 7, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, the Landlord's Agent, and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on August 24, 2008 and was scheduled to expire on September 1, 2009. Rent was payable on the first of each month in the amount of

\$950.00 and the Tenant paid a \$475.00 security deposit and a \$475.00 pet deposit on August 24, 2008.

The Tenant testified that she issued the Landlord written notice to end the tenancy early effective February 30, 2009 (written as shown in the documentary evidence), and the Tenant would find suitable tenants to take over the rental unit.

The Tenant argued that she vacated the rental unit on February 1, 2009 and she met the new tenants and Landlord at the rental unit on February 16, 2009 to finalize the ending of her tenancy with the Landlord.

The Landlord testified that when the new tenants appeared on February 16, 2009 they agreed to enter into a new tenancy agreement with the Landlord however the new tenants did not have money to pay the Landlord the security and pet deposits. The Landlord argued that the Tenant agreed to forfeit her security and pet deposits and to assign the deposits to the Landlord for the new tenant's tenancy and in return the Tenant would be let out of her fixed term tenancy agreement and the Landlord would reimburse the Tenant with \$475.00 of February 2009 rent. The Landlord referred to her documentary evidence in support of her testimony that the Tenant entered into a written agreement to forfeit her security and pet deposit.

The Tenant confirmed that she signed both agreements and argued that she had made a separate verbal agreement with the new tenants that they would pay the Tenant the deposit amounts a couple of weeks later.

Analysis

The evidence and testimony before me supports that the Tenant and Landlord entered into a written agreement on February 16, 2009 where the Tenant agreed, in writing, to allow the Landlord to retain all of the Tenant's security and pet deposits. Based on the aforementioned I find that the agreement meets the requirements under section 38(4)(a) of the Act and I hereby dismiss the Tenant's application.

As the Tenant was not successful with her application I hereby dismiss her request to recover the cost of the filing fee from the Landlord.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: September 10, 2009.

Dispute Resolution Officer