



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord and a cross application by the tenant.

The landlord applied for dispute resolution on October 05, 2009 for;

- A Monetary Order for money owed or compensation for damage or loss under The Act, Regulation or tenancy agreement – as loss of revenue for the month of September 2009 in the amount of \$2200, and carpet cleaning charges of \$45.
- An order to retain the unreturned portion of the security deposit and pet damage deposit totalling \$850 of in partial satisfaction of the monetary claims.
- Recovery of the filing fee associated with this application in the amount of \$50.

The tenant applied for dispute resolution on November 09, 2009 for:

- Double the security deposit of \$1100 and original pet damage deposit *only* of \$300
- Recovery of the filing fee associated with this application in the amount of \$50.

The tenant was surprised by the existence of an application by the landlord, claiming she did not receive the landlord's application.

The landlord also forwarded their sole evidence to Residential Tenancy Branch hours before the hearing, and did not send the same to the tenant. The landlord's evidence dated January 28, 2010 was found inadmissible into evidence – leaving both applications void of documentary evidence. Both applications proceeded on the merits of their sworn testimony.

Both parties attended the conference call hearing and participated with their submissions and sworn testimony, and were permitted to ask questions and attempt to settle all matters.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed ?

Is the tenant entitled to the monetary amounts claimed ?

Background and Evidence

The landlord provided a Canada Post Tracking number for registered mail, testifying that it came back to her as undeliverable. The landlord could not provide particulars as to what address it was sent, nor did she provide a receipt or duplicate tracking label for the registered post, or a copy of the tracking results for the registered post.

The landlord advanced testimony that the tenant did not provide written Notice to Vacate, but that the tenant's room-mate provided verbal notice that they would move September 31, 2009. The landlord testified they acted on the tenant's verbal notice and secured a new tenant for September 2009; however, the tenant did not return the building key (security key, fob, etc) until well into the month of September, and the landlord had to abort the new tenancy and forgo rental revenue for September 2009 in the amount of \$2200. The landlord testified that in the third week of September 2009 she received the necessary keys / fob. The landlord is also claiming \$45 for carpet cleaning. Regardless, the landlord testified that at the end of the tenancy she sent the tenant's room-mate half of the security deposit of \$550 and still hold a total of \$850 of the tenant's deposits. The tenant testified that it was surprising news to her that the landlord had returned half of the security deposit, but had not checked with her room-mate, and that it was very conceivable that her room-mate would have received it and not advised her of it.

The landlord claims a total of \$2245 for loss of revenue and carpet cleaning.

The tenant testified that she requested the return of the security deposit and pet damage deposit, by text mail – providing her forwarding address, and further claims that she included her forwarding address in writing along with the keys / fob which she mailed to the landlord September 14, 2009. The landlord denies that the tenant's mail included a forwarding address, and disputes that it had a return address.

The tenant testified that she conceded it is in the realm of possibility that her room-mate received \$550 of the security deposit, and amended her claim to return of double the balance of the security deposit of \$550 and the original pet damage deposit only of \$300 for a total of \$1400.

Analysis

I have considered submissions for both claims and have considered all testimony given in the hearing.

As to the landlord's claim:

I find the landlord has failed to provide sufficient evidence to support that they properly served the tenant with their application for Dispute Resolution in accordance with Section 89 of the Residential Tenancy Act. I am not satisfied the tenant was provided with notice of the landlord's application. As a result, I **dismiss** the landlord's application **with leave to reapply**.

As to the tenant's claim:

Section 38 of the Residential Tenancy Act provides as follows: **(emphasis for ease)**
Section 38(1)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following**:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further: 38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this matter, **I find** the tenant has failed to support her claim entitling her to double the security deposit for her amended claim of \$550 x 2, or \$1100. However, as I have dismissed the landlord's application it is appropriate that I order the return of the tenant's claimed balance of the original security deposit and pet damage in the total of **\$850**.

Conclusion

The landlord's application is dismissed with leave to reapply.

I grant the tenant an Order under Section 67 of the Residential Tenancy Act for the amount of **\$850**.

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: January 28, 2010
