

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy and for a monetary order for compensation for losses.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant indicated that they have moved out of the rental unit on January 31, 2010. As such her application was amended to exclude cancellation of the notice to end the tenancy.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for losses or damages and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 18, 19, 20, 43, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in October 2002 as a month to month tenancy with monthly rent of \$700.00 due on the 1st of the month, a security deposit of \$350.00 was paid. The tenancy then ended after the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective vacancy date of January 31, 2010. The rent at the end of the tenancy was \$829.69.

The tenant submitted the following documents into evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause dated December 31, 2009 with an effective vacancy dated of January 31, 2010, citing that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; put the landlord's property at significant risk and has caused extraordinary damage to the unit or property; and
- A copy of previous Dispute Resolution Decision, dated January 28, 2008 regarding a previous notice to end the tenancy.

The landlord submitted the following evidence:

- A summary of the details of the dispute dated February 9, 2010;
- A copy of previous Dispute Resolution Decision, dated January 28, 2008 regarding a previous notice to end the tenancy;
- Two neighbour statements dated January 22, 2010 and January 29, 2010;
- A copy of a Notice of Rent Increase dated December 18, 2005 with an effective date of increase of April 1, 2006; and
- Photographs of the property over a period of time – 2 photographs from December 2005; 3 from January 2008; 3 from December 2009; and 6 from January 2010.

The parties agreed that in August of 2003 the tenant and the landlord agreed to increase rent by \$25.00 per month in consideration for the landlord to allow the tenant to have a dog.

The landlord testified that that rent increase was nullified when he issued the Notice of Rent Increase that raised the rent from \$725.00 to \$800.00 in April of 2006. Both parties agreed that the \$725.00 identified in the Notice as the “current rent” included the additional \$25.00.

The tenant contends that as the rent at the start of the tenancy was \$700.00 the landlord should have collected no more \$350.00 for a pet damage deposit and because the rent continued to include this \$25.00 she has paid \$1,900.00.

The tenant confirmed in the hearing that she is not seeking refund of what should be a pet damage deposit, nor does she expect a return of the security deposit. The tenant is requesting a refund of \$1,550.00.

Analysis

Section 43 of the *Act* allows the landlord to impose a rent increase up to an amount, among other ways, agreed to by the tenant. The tenant acknowledged mutual agreement to the increase of \$25.00 in August 2003.

A pet damage deposit is defined in the *Act* as “money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet...”

The legislation introducing a pet damage deposit was enacted in January 2004. With that introduction Section 18 of the *Act* allows the landlord, after January 1, 2004, to require a pet damage deposit if he permits a tenant to keep a pet. Section 19 sets a limit of up to ½ month’s rent for such a deposit.

Section 20, however, states a landlord **must not** require a pet damage deposit at any time other than:

1. When the landlord and tenant enter into the tenancy agreement; or
2. If the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.

As the tenancy began 15 months prior and the tenant had already acquired the pet, the landlord was specifically prohibited from collecting a pet damage deposit, for this tenancy.

I am persuaded by the tenant's argument that the additional \$25.00 per month remained as included in the rent for the duration of the tenancy and was added on to when each subsequent rent increase was applied.

As the rent increase, regardless of the reasons for implementing it, was mutually agreed to by the parties and since the landlord was prohibited, by law, from requesting a pet damage deposit, I find that the additional \$25.00 per month added to the tenancy in August of 2003 was a mutually agreed upon rent increase.

I further find there was no expectation that the \$25.00 per month was to be held as security for damage but rather to be paid to the landlord as rent and not a pet damage deposit as defined in the *Act*.

Conclusion

Based on my findings above, I dismiss the tenant's application, in its entirety, without leave to reapply.

As the tenant was unsuccessful in her application, I dismiss her request for recovery of the filing fee for this hearing.

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 18, 2010.

Dispute Resolution Officer