

DECISION

Dispute Codes MNSD, FF, O, MND, MNDC

Introduction

There are applications filed by both parties. The Tenant has filed an application for a monetary order for the return of the security and the pet damage deposit and recovery of the filing fee. The Landlord has filed an application for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit or the pet damage deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony. The named Landlord, R.S. did not attend the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of the security deposit and pet damage deposit?

Is the Landlord entitled to a monetary order?

Background and Evidence

Both parties have attended the hearing by conference call and have referred to the others submitted evidence. The Landlord states that she did not receive the Tenant's new evidence package until the previous Monday (May 30, 2011). The evidence filed was date stamped June 1, 2011, June 6, 2011 and "received, processed and sent to D.R.O. on June 3, 2011" at the Residential Tenancy Branch. The Tenant filed her application for the return of the security and pet damage deposit on December 31, 2010.

Both parties agree that this Tenancy began on August 1, 2006 as the submitted copy of the tenancy agreement shows. The Tenancy ended on December 31, 2009.

The Tenant has made a claim for the return of a \$600.00 security deposit and a \$600.00 pet damage deposit. The Landlord disputes this stating that the pet damage deposit was only \$300.00. The Tenant has submitted a completed residential tenancy agreement and receipts for \$1,200.00 for the first months rent, \$600.00 for a pet

damage deposit and \$600.00 for a security deposit all with matching dates to the tenancy agreement submitted. The Landlord disputes this evidence stating that the receipts and tenancy agreement are false and that the Tenant is fraudulently misrepresenting the documents. The Landlord has supplied no evidence to support this claim. The Landlord states that she was not aware that she had to provide evidence to dispute the Tenant's claim.

The Tenant is also claiming \$172.05 for utilities. The Tenant's application does not include this in their monetary order claim, but is listed in her details of dispute. The Tenant refers to the amendment agreement for the rental signed on August 1, 2006 which states in addendum #4, "The tenant will be responsible for 60% of the Hydro and gas." This amendment was signed by the owner's daughter, E.T. on behalf of R.S. for the Landlord. The Landlord disputes this stating that her son is just a Tenant and is not involved in the Tenancy. The Landlord stated that the Tenant should be recovering the utility costs separately from the other Tenant. The Tenant has not provided any invoices for Hydro. The Tenant has provided 3 Terasen Gas in her name for invoices with a cost to 60% of the totals equalling to \$140.33 and \$31.13 for a total of \$172.05.

The Landlord has also made a claim for a monetary order for damages to the unit of \$448.35 for 7 hours of general clean up at \$64.05, blind replacement of \$35.00, the repair of large holes for \$45.00, electrician's labour of \$150.00, the replacement of refrigerator parts or repair of \$233.99 and dry cleaning of the kitchen curtains for \$36.00. The Landlord relies on an incomplete condition inspection report completed by the Landlord's daughter. The report is dated only for the move-in portion of the report and is not completed properly with signatures from both parties. The copy provided to the Tenant appears to be different from the copy submitted into evidence by the Landlord. The Landlord has also provided an estimate of cleaning for 5 hours by Maid in the Shade. The Landlord's witness, M.B. stated that no professional work was done and that all of the cleaning was performed by the Landlord. The Landlord has provided no further evidence to support her claim.

Analysis

Both parties have attended the hearing and have referred to each others evidence. I find that based upon the Landlord's direct testimony that she received the Tenant's new evidence package with sufficient time to respond to it. The Tenant's application and details of dispute provide sufficient notice from December 31, 2010 of what the Landlord was likely needed to respond to. I find that both parties have been properly served with the notices and the evidence packages submitted. The Landlord has offered no evidence that could be submitted to dispute the Tenant's claim if given more time.

Based upon the evidence provided by both parties and the contradictory testimony of each, I am satisfied that the Landlord/Owner's son, R.S. acted as an agent and is therefore considered the Landlord's Agent as the Landlord/Owner's daughter acted for her when she performed the duties in the walk through inspection at the end of the Tenancy.

This Tenancy ended on December 31, 2009 and the Landlord was provided with the Tenant's forwarding address in writing on December 31, 2009. The Landlord failed to return the Tenant's security deposit and pet damage deposit within 15 days or filed an application for dispute resolution until May 12, 2011. I find based upon the evidence and the direct testimony of both parties that the Landlord has failed to comply with the Act. Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

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

(a) **the date the tenancy ends**, and

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

the landlord must do one of the following:

(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;

(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.

Further the Act states,

(6) **If a landlord does not comply** with subsection (1), the landlord

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

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

In this situation the Tenant has not applied for the return of double the security deposit. I find that the Tenant is entitled to the return of the \$600.00 security deposit.

The Landlord's dispute over the amount of the pet damage deposit has not been established. I find based upon evidence submitted I prefer the evidence of the Tenant that the pet damage deposit is \$600.00. The Tenant is entitled to the return of the \$600.00 pet damage deposit. The Landlord has failed to establish a claim to keep all or part of the security or pet damage deposit.

I find based upon the evidence provided and the direct testimony of both parties that the Landlord has failed to establish a claim for damages. The Landlord has not provided any proof of costs associated with their claim. I found the direct testimony of the Landlord and her witness unreliable. The Landlord relies on the incomplete condition inspection report which offers no evidence to support her claims. I prefer the evidence provided by the Tenant. The Landlord's application for money owed or compensation for damage is dismissed.

Based upon the above, I find that the Tenant is entitled to the return of the \$600.00 security deposit and the \$600.00 pet damage deposit. The Tenant has established a claim for \$172.05 for the recovery of 40% of the Terasen Gas Utilities. The Tenant is also entitled to the recovery of the \$50.00 filing fee. I find that the Tenant has established a total claim of \$1,422.05. I grant the Tenant an order under section 67 for the balance due of \$1,422.05. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord's application is dismissed.
The Tenant is granted a monetary order for \$1,422.05.

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: June 09, 2011.

Residential Tenancy Branch