



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of her pet and security deposits.

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. The Landlord confirmed receipt of the hearing documents and evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order for the return of the pet and security deposits?

Background and Evidence

The witness dialled into the hearing after I requested that he leave the room where the Tenant was located until I called him as a witness. He demanded to know how he was going to get his deposit money back. I explained that he was not named as an applicant to this dispute nor was he listed as a tenant on the tenancy agreement I had in evidence; therefore he would be considered a witness at this hearing. I instructed him to disconnect from the hearing and that I would call him into the hearing if I needed to hear his testimony.

The Tenant testified that their original tenancy agreement named her and the person named as her witness for this dispute as co-tenants of the rental property. They

entered into the agreement and moved into the unit on January 23, 2011 for a tenancy that was scheduled to begin on February 1, 2011. Rent was payable on the first of each month in the amount of \$875.00. They paid \$437.50 as the pet deposit and \$437.50 as the security deposit to the Landlord.

The Tenant advised that shortly into the tenancy she broke up with her partner, the witness. Then on approximately March 28, 2011 the Landlord and the witness were involved in a physical altercation where the police were called. The witness was told he could no longer reside at the rental unit and he moved out. The Landlord requested the Tenant sign a new rental agreement that was back dated to the start of the tenancy and which listed only her as the Tenant. In support of this new agreement the Landlord offered the Tenant a reduced rent of \$600.00 for the month of April 2011 to allow her time to find a new roommate. Over the Easter weekend the witness returned and they were working on re-establishing their relationship. The Landlord found out and informed them that they could not reside at the rental unit. A notice to end tenancy was issued and served personally to the witness. They vacated the property May 9, 2011 and attended a move out inspection with the Owner on May 12, 2011. The Tenant stated that she provided her forwarding address to the Owner on May 12, 2011 when she wrote it on a folder the Owner had.

The Owner testified and confirmed she attended the move out inspection on May 12, 2011 and she received the Tenant's forwarding address on that date.

The Landlord testified and confirmed they do not have the Tenant's written permission to keep the security and pet deposits; they do not have an Order authorizing them to keep the security and pet deposits; and they did not make their application for dispute resolution for damages and to keep the deposits until June 16, 2011.

The Landlord explained the January 21, 2011 receipt provided in evidence is for \$1,300.00 which consisted of \$100.00 rent for the one week in January 2011, \$325.00 towards the security deposit, and \$875.00 as February 1, 2011 rent. The balance of \$112.50 for the security deposit and the \$437.50 for the pet deposit was paid in full sometime during the month of February 2011.

A short discussion followed whereby the parties were given the opportunity to settle this matter. The Landlord offered to retain the deposits to cover his losses and to call it even with no further actions from either party however the Tenant decided not to settle and wished to proceed with her application.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement, a copy of a receipt dated January 21, 2011 issued in the name of the Tenant and the witness.

The *Residential Tenancy Policy Guideline #13* provides that Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposits. Therefore the Tenant is within her rights to make application for the return of the deposits. The responsibility falls to the tenant to apportion among the witness and herself any amount of deposits received back from the Landlord.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports the tenancy ended on May 9, 2011 when the Tenant vacated the property and the Tenant provided the Owner with her forwarding address on May 12, 2011. The Landlord did not file his application for dispute resolution to keep the deposits until June 16, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security and pet deposits in full or file for dispute resolution no later than May 27, 2011. The application was not filed until June 16, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find that the Tenant has met the burden of proof and I therefore approve her claim for the return of double the pet and security deposits plus interest in the amount of **\$1,750.00** ($\$437.50 + 437.50 \times 2 + \0.00 of interest).

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,750.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: June 22, 2011.

Residential Tenancy Branch