



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2225 TRIUMPH APT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenants be awarded a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: a cheque from the Landlord for \$1,160.00; a carpet cleaning receipt dated January 2, 2013; and Canada Post receipts.

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the Tenants' written forwarding address dated

January 9, 2013; the Tenants' notice to end tenancy dated November 29, 2012; and the Landlord's cheque for \$1,160.00.

The following facts were discussed during this proceeding and were not in dispute:

- The parties entered into a fixed term tenancy agreement that began on January 1, 2012 and was set to switch to a month to month tenancy after January 31, 2013;
- Rent was payable on the first of each month in the amount of \$1,500.00 and on December 22, 2011 the Tenants paid \$750.00 as the security deposit plus \$375.00 towards the required \$750.00 pet deposit;
- On November 29, 2012, the Tenants provided notice to end their tenancy effective December 31, 2012;
- The Landlord agreed to allow the Tenants to end their tenancy one month prior to the end of the fixed term;
- The Tenants provided their forwarding address, in writing, on January 9, 2013;
- The Landlord mailed the Tenants a cheque on January 4, 2013 for \$1,160.00 which has been cashed.

The Tenants are seeking the return of double their deposit because they believe they did not get their full deposits returned. They argued that they vacated the suite on December 15th and December 18th, 2012 respectively and were not given an opportunity to attend a move out inspection. They think they may have paid the full pet deposit with their first month's rent.

The Landlord testified that the Tenants never paid the balance owing on the pet deposit because their cat died. She stated the Tenants did not move out in December 2012, rather, they were still moving out possessions as of January 2, 2013, when she saw M.D. standing outside waiting for a cab with possessions in hand. She spoke with the Tenant that evening and asked why she did not attend the move out inspection at 1:00 p.m. that day and they rescheduled it for January 3, 2013 but the Tenant did not show up. She communicated with the Tenants by text message and telephone attempting to set up inspections on January 5th and again on January 8, 2013, at which time she posted a notice of final inspection on the door.

The Landlord said that when she entered the unit on January 9, 2013, she found the notice of inspection was gone and the Tenants' had left their keys and forwarding address on the counter. She mailed the January 4th, 2013, cheque which included \$750.00 for the security deposit; \$375.00 for the pet deposit; \$25.00 key deposit; and what appears to be an additional of \$10.00 due to an addition error.

The Tenants deny being informed of a move out inspection time. They confirmed having text and telephone communications with the Landlord in January 2013 but they were about returning the keys and not about attending an inspection. M.D. confirmed moving additional possessions out of the unit on January 2, 2013 but argued she had verbal permission to leave those behind for the next tenant. They confirmed they left the keys inside the unit on January 9, 2013 with their forwarding address.

The Tenants stated that they thought they paid the rest of their pet deposit on their first rent cheque. They were given leave to look up their bank information during the hearing but were not able to find out information about that first rent cheque; nor did they provide documentary evidence to prove the actual payments. The Tenants confirmed that their cat died during their tenancy. The Tenants could not remember if they paid a key deposit.

The parties confirmed the Landlord's cheque of \$1,160.00 was cashed.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Landlord provided the original tenancy agreement into evidence which clearly indicates the Tenants paid **\$1,150.00** as deposits on December 22, 2011 (\$750.00 as the security deposit; \$375.00 as the pet deposit; plus \$25.00 as the key deposit).

The undisputed evidence proves the Tenants received a payment for the deposit refunds in the amount of **\$1,160.00**.

In this case, the Tenants have the burden to prove how much money was paid for the security deposit, pet deposit and key deposit. In the absence of documentary evidence to the contrary; I find the Tenants were refunded the full amount of their deposits plus an additional \$10.00 resulting from an addition error. Accordingly, there is insufficient evidence to support their claim for return of double their deposit and the application is dismissed, without leave to reapply.

The Tenants have not succeeded with their application; therefore I find they must bear the burden of the cost to file that application.

Conclusion

I HEREBY DISMISS the Tenants' claim, 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: April 18, 2013

Residential Tenancy Branch