



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement and a monetary order.

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

At the outset of the hearing the landlord's agent testified the tenant did not serve her Application in accordance with the *Act* as she had placed it under the door of the office. I confirmed with the landlord that she had received the documents; that she had sufficient time to prepare for the hearing and that she was prepared to respond to the tenant's claims in their totality.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss and for return of a pet damage deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began, initially on a 31 day basis between June 1, 2010 and July 1, 2010. The document submitted to substantiate this tenancy the parties agreed to rent in the amount of \$875.00 plus \$30.00 plus \$35.00 for a total of \$940.00 and a security deposit of \$440.00.

The tenant submits that the additional \$30.00 was an unknown government fee and she seeks to have it returned. The tenant submits the \$35.00 was a pet damage deposit which she later then paid this additional \$35.00 for the remainder of the tenancy that continued after July 1, 2010 until she vacated the property in January 2013. The tenant seeks 30 months of this payment for a total of \$1,050.00.

The landlord submits the \$30.00 charge for the July 2010 period was to convert the 30 day rate to a 31 day rates as outlined on the “license to occupy” document submitted by the tenant.

The landlord testified that the \$35.00 charge on that same licence to occupy was for a pet fee but that no further pet deposit was collected. The landlord testified that after the initial month (June 2010) the parties agreed to rent in the amount of \$910.00 per month but that the computer system of the hotel does not allow to enter in any amount greater than \$875.00 and as such a miscellaneous charge of \$35.00 appears on each monthly bill.

The tenant submits that an employee of the landlord had a pet that she brought to work and that her pet attacked the tenant’s pet for which she incurred \$550.64 in veterinary bills. The tenant seeks compensation for these losses. The tenant confirmed she has never approached the employee for compensation for any of these veterinary costs.

The tenant also compensation in the amount of \$1,365.00 or the equivalent of 3 – ½ month’s worth of rent because the landlord provided an “unfit apartment”. The tenant also seeks \$455.00 for a period of 3 months that she stated the back door was propped open.

The tenant submits that the rental unit sliding doors had a substantial breeze and that as result she had to keep the heat high and be constantly covered in a blanket. The tenant provided digital evidence showing her vertical blinds blowing constantly. The landlord submits that when she had her engineers review the digital evidence the commented on the fact that if there was a leak at one end only the end blind would be blowing but in the evidence all of the blinds are blowing around as if being pushed by a fan.

The tenant submits the elevator constantly was out of service; that her sliding door did not lock and the landlord refused to affect snow removal in winter months. The landlord provided documentary evidence from their service providers stating the elevator had a low number of repair requests and that there was nothing wrong with the lock on the sliding door.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

However, in the case before me, I find that there is insufficient evidence to document what was agreed upon for the majority of the tenancy in terms of the amount of rent per month. As this application is the tenant's claim that she believes she has paid a pet deposit in the amount of \$1,050.00 and an additional government fee of \$30.00, the burden rests with the tenant to provide sufficient evidence to establish her claim.

Based on the "license to occupy" document I find the document identifies a 30.00 rental in the amount \$875.00. I also find it likely, based on the balance of probabilities, that a landlord would seek an additional day amount for a 31 day period.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord submits that there was a \$35.00 pet fee for that 31 day period of July 2010 I accept that the \$35.00 constitutes a pet damage deposit. However, I find in the absence of any other documentary evidence to establish that the parties agreed to anything else other than a \$910.00 per month rental from July 1, 2010 onward the tenant has failed to provide any evidence to establish that she paid a \$35.00 fee monthly for 30 months that went towards a pet damage deposit.

As such, the landlord had 15 days from the end of the tenancy and received of the tenants forwarding address to return the \$35.00 pet damage deposit, which, I find, the landlord failed to do. I accept that the landlord did return the bulk of the security deposit and by agreement with the tenant retained a small portion of that deposit.

In relation to the tenant's claim regarding reimbursement of veterinary bills I find the tenant has provided no evidence to substantiate her claim that the landlord's employee's dog caused any injury to her pet. Further, I find the tenant failed to attempt to hold the owner of the dog she states caused injury to her dog responsible for the costs she incurred and has therefore not attempted to mitigate any such losses.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

While the tenant provided testimony as to the condition of the rental unit and residential property all of her evidence was countered by experts and service providers confirmed that those items that she complained about were not a problem during the tenancy. I also accept, based on the balance of probabilities, that the engineer's version of how the blinds in the room are "dancing" is the result of a fan and not an isolated area of air infiltration.

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$70.00** comprised of double the amount of the \$35.00 pet damage deposit the tenant paid in June 2010.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

Also based on the above, I dismiss the balance of the tenant's claim, including her claim to recover the filing fee as she was mostly unsuccessful in her claim.

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: May 21, 2013

Residential Tenancy Branch

