



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Keller Williams Valley Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of her pet damage deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a return of her pet damage deposit and to recover the filing fee?

Background and Evidence

I heard undisputed evidence that this tenancy began on April 1, 2012, ended on March 30, 2013, monthly rent was \$1800, and the tenant paid a security deposit of \$900. The security deposit has been returned to the tenant in full.

The dispute of the parties is whether or not a pet damage deposit was paid.

The tenant's relevant documentary evidence included the following:

- A copy of a screen grab shot of a note from the tenant to the landlord indicating a payment of \$260 in cash with a request for the receipt later;
- Copies of the tenant's bank withdrawal information, which indicates withdrawal from the tenant's account via an ATM withdrawal, on two separate days for a total of \$780;
- Copies of the tenant's bank deposit information, which indicates a deposit into the tenant's account for a total of \$900;
- Multiple email communications between the tenant and landlord's agent, SM, discussing various issues, including a payment of \$260 in cash, with a request for the receipt at a later date, repair issues with the residential property, and informing SM that she, the tenant, had the pet damage deposit ready to pay; and
- The written tenancy agreement, indicating that a pet damage deposit of \$900 was required to be paid by April 1, 2012.

The landlord's relevant documentary evidence included;

- A written list of facts;
- Receipts for April 2012 through February 2013;
- A receipt for the tenant's security deposit;
- A condition inspection report;
- A tenant ledger sheet which did not indicate that a pet damage deposit was paid;
- Proof of all payments made; and
- A March 19, 2012 receipt for \$260 paid in cash by the tenant.

In support of her application, the tenant stated that she paid a pet damage deposit to the landlord, in cash on April 12 or 13, 2012, when she dropped off an envelope with the cash inside at the landlord's office. I note that the landlord is a property management company.

The tenant submitted that she gave the envelope to the person at the front desk, as the agent she usually dealt with was not available. According to the tenant, she wrote a note to the agent, which she left with the cash, requesting a receipt later.

The tenant further submitted that it was not unprecedented that she left cash with the landlord, as indicated by her evidence showing that she previously left \$260 in cash in March 2012, requesting a receipt.

The tenant further supported her actions of leaving cash as she was a housecleaner and had worked for the landlord's company over the years and did not think it was an issue with leaving cash.

The tenant submitted that her roommate, her boyfriend at the time, took \$900 from his account and this amount was deposited into her account, as shown by her bank records. The tenant said her boyfriend paid the pet damage deposit as the pet was his, and that she had to repay her former boyfriend at the end of the tenancy, out of her personal moneys.

The tenant said that her bank records show a deposit of \$900 into her account on April 12, 2012, and a withdrawal of a total of \$780, on April 12 and 13. The tenant explained that she had the \$120 balance in cash.

According to the tenant, when she began asking SM about the return of her pet damage deposit, she was informed that the landlord did not have a record of her making that payment. Further according to the tenant, SM acknowledged to her in a text message that there was a small possibility that they did receive the payment. I note the tenant did not supply a copy of the text message.

In response to the tenant's application, the landlord denied receiving a pet damage deposit from the tenant, as there were no records of that payment, as shown by their documentary evidence, which shows a record of all payments made by the tenant during this tenancy.

The landlord's agent, JL, submitted that had the landlord received a pet damage deposit, this deposit would have been returned just as had the security deposit, as there were no issues with this tenant.

In response to my question, JL stated that when a payment is dropped off at their office, the person at the front desk accepts the payment and issues a receipt at that moment, as they are instructed. If the person at the front desk is handed an envelope and is not told that there is cash in the envelope, that envelope is promptly placed in a locked, secure box. In all instances, every payment and envelope is placed in the locked secure box when received.

The landlord's agent, JL, said that her company manages over 140 properties and that they are quite proud of their record in managing these properties as there hasn't been any mistakes made. As to rent payments for these 140 properties, JL explained that each of tenants drops off their payments at their office monthly or as required. JL contended that even under these circumstances it would not be possible that a clerical or human error would be made by their staff in overlooking, mishandling or misplacing the envelope. The landlord submitted that no employee would jeopardize their career in taking the cash.

In response to my question as to why the landlord did not pursue the pet damage deposit of \$900 when the written tenancy agreement required one to be paid by April 1, 2012, the landlord said that they simply did not want to press that issue with the tenant, as she was a great tenant and there were many issues with the residential property and rental unit at the beginning of the tenancy that they were having to deal with.

When I inquired of SM why she did not follow up with the tenant when the tenant informed her that she had the pet damage deposit, SM said that they made the bad decision not to pursue the matter.

Analysis

In considering whether the tenant paid a pet damage deposit, it is not a simple matter of if there is no receipt showing a cash payment, that there was no payment.

I find both parties provided credible and believable oral and documentary evidence. However in this case, I find the tenant provided clear, detailed and consistent evidence of her proactive attempts to make sure the pet damage deposit was made. She contacted the landlord's agent several times, informing that agent that she had the cash payment ready. The bank information provided by the tenant showed a withdrawal of \$780, and I accept that the tenant was able to provide the balance in cash.

I also find that the tenant provided undisputed evidence that she dropped off the pet damage deposit of \$900. I find that this point was not in dispute as the two attending agents were not present to witness whether the envelope was dropped off; the agents merely argued that they did not have a record of a payment being made. I also considered the fact that the landlord failed to have in attendance the administrative support staff person working at the front desk on the day, or two days in question, who is the person who could actually confirm whether or not a payment was not delivered to the landlord's office or at least rebut the tenant's evidence.

Given the circumstances, I find it highly likely that the tenant made the payment, given that this was an important issue to her at the time, and equally probable that through an administrative error, the payment was not recorded. In reaching this conclusion, I considered the fact that the landlord said that their company managed at least 140 rental properties, that all payments for those properties by the 140 sets of tenants were made in the office, and that there are various persons working at the front desk. I do not find the landlord's statement that it would not be possible for a human error to exist under those circumstances with 140 sets of tenants making payments to be realistic or convincing. I find the tenant's admission that it was a small possibility that she may have made the human error to be more compelling.

I further considered that the tenancy agreement stated that the tenant was to pay a pet damage deposit, and had she failed to pay, I would expect that the landlord would strike through that portion of the tenancy agreement, which they provided into evidence, to indicate that she never paid. This was not the case.

I further considered that the tenant has previously made a sizable cash payment, delivered to the landlord's office without being issued a receipt.

Due to the above, I find it more likely than not that the tenant paid a \$900 pet damage deposit and is therefore entitled to have that deposit returned.

I therefore find the tenant is entitled to a monetary award of \$950, comprised of her pet damage deposit of \$900 and the filing fee of \$50, which I have allowed pursuant to section 72 of the Act.

I grant the tenant a monetary order for \$950 and it is enclosed with the tenant's Decision. This order is a legally binding, final order, and should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

I have not doubled the pet damage deposit, which is allowed under section 38 of the Act as it is my conclusion that the tenant specifically waived her rights to recover double her pet damage deposit.

Conclusion

The tenant's application has been successful and she is granted a monetary order in the amount of \$950.

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: August 16, 2013

Residential Tenancy Branch

