



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnc, cnr, mt, erp, lat, lre, mndc, mnsd, o, olc, psf, rp, rpp, rr, ff

The tenants apply for a vast array of orders. At the hearing, the tenants confirmed that the item of priority to address in my decision was the tenants' claim for recovery of their security deposit and pet damage deposit.

Both parties attended, with the landlord being represented by Counsel. All parties were provided opportunity to testify and/or make submissions. Evidence was exchanged prior to the hearing, and has been considered in the making of this decision. No issues were raised as to the service of any documents.

In this decision I have decided the issue of whether or not the tenants are entitled to an order for the recovery of any security deposit or pet damage deposit paid. As is apparent by the number of dispute codes listed above, there are numerous other claims listed by the tenants in their application. I have declined to deal with this vast number of claims. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with such a wide array of issues of concern to the tenants in one short hearing. Hearings are generally limited to issues that are related in fact and law. In this case the other claims of the tenant are not determined to be related in fact or law to the issue of the recovery of the deposits. Furthermore, as the tenancy has ended, many of the claims are moot. All other claims of the tenants (other than for recovery of the deposits) are therefore dismissed pursuant to Rule 2.3, with liberty to re-apply.

Issue(s) to be Decided

Are the tenants entitled to recovery the pet damage deposit or security deposit?

Background and Evidence

The female tenant's evidence was as follows:

This tenancy began September 1, 2015 and ended May 15, 2016. Monthly rent was \$950.00. A security deposit of \$475.00 was paid. After a tenancy agreement was made, the landlord amended the agreement requiring the tenants to pay a further \$100.00 per month, as an ongoing pet damage deposit. A total pet damage deposit of \$800.00 was paid. No condition inspection report was ever prepared by the landlord at the start of the tenancy. At the end of the tenancy the tenants provided their new forwarding address in

writing, on May 24, 2016. The landlord has not returned the security deposit or the pet damage deposits.

The landlord's evidence was as follows:

This tenancy began September 1, 2015. No formal condition inspection report was prepared, but ongoing emails were exchanged regarding the condition of the premises. Although a security deposit of \$475.00 was required, in fact the tenant only paid \$250.00 at the start of the tenancy, as is indicated on the receipt issued for the deposit. No subsequent payments were made towards the deposit, no receipts issued, and no further payments are proven to have been applied by the tenants towards the security deposit. No pet damage deposit was ever paid. Following discussions that the tenants wanted to have two dogs, it was agreed that the rent would be \$1,050.00 per month, and not \$950.00 as first agreed. An amendment to this effect was made to the tenancy agreement. At no time did the tenant refuse to pay this higher rental sum, or indicate that she considered the payments to be pet damage deposits. The tenants provided a forwarding address by way of email May 24, 2016. However on that date the tenancy had not yet ended. The keys were never returned, and the tenants never replied to the landlord's efforts to determine a move out date, and a date when a final inspection could occur. The landlord attended to the premises about two weeks ago, and confirmed that the premises had been vacated by the tenants. There are rental arrears owing, and there is damage to the premises.

Analysis

Regarding the issue of the pet damage deposit, I accept the landlord's testimony that no pet damage deposit was ever paid. The female tenant submits she paid \$100.00 per month as a pet damage deposit, but I note that in reality rent was paid every month. More significantly, I accept the landlord's testimony that the agreement to allow the tenants to have two dogs in the premises was a material change to the tenancy agreement, and that the parties negotiated an increase in rent as consideration for permitting the tenants to have the dogs at the premises. In terms of the tenants' claim to recover the deposit, as no pet damage deposit was paid, the landlord is not retaining any pet damage deposit, and no order for the return of such deposit is appropriate. That portion of the claim is dismissed.

As to the security deposit, the parties do not agree as to the amount of the security deposit paid by the tenants. A receipt issued by the landlord September 2, 2015 indicates that the female tenant paid \$250.00 towards her \$450.00 damage deposit, and that \$150.00 remained owing. A hand written accounting of the tenants' arrears dated May 1, 2016 indicates that a security deposit of \$475.00 was paid, supporting the testimony of the tenant. Given that both of these documents were prepared by the

landlord, I apply the legal principle of *contra proferentem* meaning that any ambiguity is construed against the maker of the document. In other words, I find that the deposit paid by the tenants was \$475.00.

With respect to the tenants' claim to recover the security deposit, I note that the tenants' application for such recovery was filed May 16, 2016, but that the tenancy did not end until May 27, 2016. Section 38 of the Residential Tenancy Act governs the issue of the return of the security deposit. Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. The landlord has filed no claim as against the tenant in this case, but the 15 day period did not end until June 11, 2016, a date after the tenants' claim was filed, and a date after the hearing of this claim. Accordingly, I find that the tenants' claim was prematurely made, given that it was filed prior to the expiry of the 15 day period. Under these circumstances, I have no authority to order the return of the deposit. Now that the 15 day period has ended, should the landlord not return the full deposit the tenants are at liberty to file a new claim for recovery of their deposit. I need not pre-determine whether the doubling provisions set out in Section 38(6) would apply.

Conclusion

The tenants' claim is dismissed in full, with liberty 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: June 11, 2016

Residential Tenancy Branch