



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation - Section 67; and
3. An Order for the Landlord to comply - Section 62.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing in person in accordance with Section 89 of the Act. The Landlord did not attend the hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions. The Tenant gave no evidence in relation to the claim for the Landlord’s compliance and while this claim may have only been sought in relation to the other claims, should there have been some other reason for the claim for the Landlord’s compliance I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to the compensation claimed?

Background and Evidence

On May 10, 2016 the Tenant paid a security deposit of \$285.00 in cash to the Landlord for a tenancy to start on June 1, 2016. The Tenant had her pets with her when the security deposit was given to the Landlord. The Landlord knew the Tenant had pets and did not ask for any pet deposit at the time of accepting the security deposit. The

Landlord did not present a tenancy agreement for signing at this time however the Landlord filled out a form for a government agency indicating rent payments of \$570.00 were payable on the first day of each month. This form also indicated that the Tenant was to pay \$285.00 for a security deposit. Because of this form the government agency sent another \$285.00 on July 8, 2016 to the Landlord for a security deposit. The Tenant claims return of the overpaid security deposit in the amount of \$285.00.

On July 8, 2016 the Landlord had the Tenant sign a tenancy agreement and there was no provision for a pet deposit. The Landlord did not provide a copy of this agreement to the Tenant. Following this date the Tenant got into a dispute with the Landlord over her pet and on August 5, 2016 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Notice indicates that the Tenant was late in paying \$200.00 for a pet deposit.

The Tenant asked for a copy of the signed tenancy agreement and on August 7, 2016 the Landlord provided a copy of a different agreement to the Tenant. This copy did not include the signature page and included a provision for the payment in two installations of a pet deposit. The Tenant did not sign this version of a tenancy agreement. The Tenant claims a cancellation of the Notice.

Analysis

Section 20 of the Act provides that a landlord must not require a pet damage deposit at any time other than

- (i) when the landlord and tenant enter into the tenancy agreement, or
- (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.

Accepting that the Tenant had pets from the outset of the tenancy, that the Landlord was aware that the Tenant had pets, and considering that the Landlord did not require payment of a pet deposit either at the outset when the security deposit was provided or

later when the tenancy agreement was signed, I find that the Landlord may not now require a pet deposit. As the Notice deals with only a pet deposit amount I find that the Notice is not valid. The Notice is therefore cancelled and the tenancy continues.

Section 19 of the Act provides that a landlord must not require or accept a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. This section further provides that if a landlord accepts a security deposit that is greater than the amount permitted the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the undisputed evidence of that the Tenant paid a security deposit of \$285.00 in cash on May 10, 2016 I find that the Landlord could not collect any more for a security deposit. Based on the undisputed evidence that the government agency sent an additional security deposit of \$285.00 to the Landlord I find that the Landlord received an overpayment of a security deposit in the mount of **\$285.00** and that the Tenant is entitled to its return. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect. I grant the Tenant an order under Section 67 of the Act for **\$285.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: October 05, 2016

Residential Tenancy Branch