



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Golden Cheers Holding
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenant's application for double recovery of the pet and security deposits, as well as further monetary compensation for damage or loss. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application and evidence. The landlord did not submit documentary evidence but gave testimony. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the pet and security deposits?
Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

The tenancy began on July 15, 2016, with monthly rent of \$800.00 payable in advance on the first day of each month. At the beginning of the tenancy, the tenant paid the landlord a security deposit of \$400.00 and a pet deposit of \$400.00. The tenant vacated the unit in April 2016.

Tenant's Claim

The tenant stated that in February 2016 there were leaks in her bathroom due to broken water pipes in the building. The tenant submitted that her understanding was that some pipes were clamped to stop the leaks, but that was only a temporary fix.

The tenant stated that the water kept running and created mouldy conditions in her unit that caused her to become really sick. The tenant submitted photographs showing the right side of her right eye appearing red, and a doctor's note indicating that on March 16, 2016 she was prescribed some drops for pink eye, and on April 25, 2016 she was prescribed different eye drops and the doctor noted, "try to remove potential allergen triggers from environment."

The tenant stated that she called the landlord numerous times, but got no response. The tenant stated that in April 2016 her bathroom was gutted and unusable for two weeks. The tenant stated that the landlord deemed the rental unit "liveable," and he therefore was not going to repair the walls and flooring in the living area of the rental unit.

The tenant presented evidence that on April 29, 2016 she successfully faxed the landlord at the fax number set out on the tenancy agreement, and informed the landlord that because of the conditions in the rental unit, she was vacating immediately. In the faxed message the tenant also provided her forwarding address. The landlord did not return the tenant's deposits or make an application to keep the deposits.

The tenant has claimed compensation of \$160.60 for prescription eye drops; \$122.85 for a storage unit because she had to do an "emergency move out"; and \$1,600.00 for double recovery of her pet and security deposits.

Landlord's Response

The landlord stated that other tenants in the building had concerns about the water but not to the extent of this tenant. The landlord stated that they did not get the April 29, 2016 fax with the tenant's forwarding address and notice to vacate. The landlord stated that the tenant did not return her key.

Analysis

I find that the tenant is entitled to double recovery of the pet and security deposits.

Section 38 of the Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on or about April 30, 2016, and the tenant provided her forwarding address in writing on April 29, 2016. I accept the tenant's evidence that she successfully faxed the landlord her written forwarding address and her notice to vacate. Section 88 of the Act allows a tenant to serve a document by transmitting a copy to a fax number provided as an address for service to the landlord. Section 90 of the Act sets out that a document provided by fax is deemed received three days after faxing. I find that the landlord was deemed served with the tenant's notice to vacate and written forwarding address on May 2, 2016.

The landlord failed to repay the security deposit or make an application for dispute resolution within 15 days after May 2, 2016, the date he was deemed to have received the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for recovery of double the security and pet deposits in the amount of \$1,600.00.

I find that the tenant did not provide sufficient evidence to support the remainder of her claim. The doctor's notes do not provide more than speculation that allergens related to mould were the cause of the tenant's eye infection. The tenant did not provide sufficient evidence that she made written requests for repairs, or that she applied for an order for repairs. Instead, she decided to move out of the rental unit.

As her application was mostly successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of her application.

Conclusion

The tenant's claims for double recovery of the security and pet deposits and recovery of the filing fee are successful. The remainder of the tenant's monetary claim is dismissed.

I grant the tenant an order under section 67 for the balance due of \$1,700.00. This order may be filed in 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: December 12, 2016

Residential Tenancy Branch