



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the Act, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and her agent and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf at this hearing. This hearing lasted approximately 57 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenants' application.

The tenants said that they did not receive any written evidence from the landlord. The landlord said that she served her written evidence to the tenants by way of registered mail on February 10, 2017. In accordance with sections 88 and 90 of the Act, I find that the tenants were deemed served with the landlord's written evidence on February 15, 2017, five days after its registered mailing. February 15, 2017 was the date of this hearing. I find that the evidence was not deemed received by the tenants at least 7 days prior to the hearing date and is late as per Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Accordingly, I advised both parties that I could not consider the landlord's written evidence package at this hearing or in my decision because it was late.

Issues to be Decided

Are the tenants entitled to a return of their pet damage deposit?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties and the landlord's agent, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began with the landlord on October 1, 2011. A new owner purchased the rental unit from the landlord on January 3, 2017 and assumed this tenancy. The tenants continue to reside in the rental unit. Monthly rent in the amount of \$670.00 was payable to the landlord on the first day of each month and continues to be the same rent with the new owner. A security deposit of \$300.00 was paid by the tenants to the landlord and transferred to the new owner.

The tenants said that they signed a written tenancy agreement with the landlord that was two pages. The landlord said that it was only one page and it was signed in the presence of the landlord, her agent and the two tenants. The tenants stated that the agreement was only signed in the presence of them and the landlord and the landlord shortened the agreement to one page and took their signatures from the second page and transposed them to the first page. The landlord denied this. The tenants provided a copy of the first page of the agreement and the landlord agreed that was the only page.

The tenants claimed that they paid a pet damage deposit totalling \$600.00 to the landlord. They said that they paid \$300.00 for one pet and then added another \$300.00 when the landlord demanded another deposit for a second pet. The landlord denied the above and pointed to the one-page tenancy agreement which said that the tenants could have two pets and only pay one pet damage deposit of \$300.00. The landlord maintained that she is aware that as per the *Act*, she is only entitled to demand one pet damage deposit from the tenants regardless of the number of pets that they have at the rental unit.

The tenants claimed that they are almost certain that the second missing page of the tenancy agreement indicates that they paid a second pet damage deposit of \$300.00 to the landlord. They explained that they requested this second page of the tenancy agreement from the landlord who refused to provide it to them. The tenants provided a written letter to the landlord, requesting the second page of the agreement. The landlord and her agent claimed that they both witnessed the two tenants paying cash of only \$300.00 for one pet damage deposit.

Both parties agreed that the landlord still has the tenants' pet damage deposit, as it was not transferred to the new owner, and the landlord offered a certified cheque of \$300.00 to the tenants for the return of it, but they refused. The tenants said that they no longer have pets in the rental unit. The landlord said that she has no issue returning the \$300.00 pet damage deposit to the tenants but she would not return \$600.00 because it was never paid.

The tenants seek a return of their pet damage deposit of \$600.00 and to recover the \$100.00 filing fee paid for this application. They also seek an order for the landlord to provide them with a copy of the second page of the tenancy agreement, which they say proves that they overpaid on their pet damage deposit.

Analysis

Overall, I found the landlord and her agent to be more credible and forthcoming witnesses than the two tenants. Throughout the hearing, when I asked the tenants questions, they frequently changed their testimony to suit the question being asked. When confronted with conflicts, they again changed their testimony or did not provide reasonable or plausible explanations. The landlord and her agent's testimony was clear, concise and consistent throughout the hearing.

Section 38 of the *Act* requires the landlord to either return the tenants' pet damage deposit or file for dispute resolution for authorization to retain the pet damage deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the pet damage deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the pet damage deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

As this tenancy has not ended, since it has continued with the new owner and the tenants have not provided a forwarding address, the doubling provision of section 38 of the *Act* has not been triggered. I find that the tenants are not entitled to the return of double the value of their pet damage deposit.

I accept the evidence of the landlord and her agent that the tenants only paid one pet damage deposit, totalling \$300.00, for the two pets that the tenants had during their tenancy with the landlord. I found the evidence of the landlord and her agent to be more credible and convincing than the two tenants. The tenants provided no documentary proof that they paid two pet damage deposits, totalling \$600.00, to the landlord. They did not provide bank statements showing the cash that they said they withdrew to pay the landlord. The tenants' own notes, in a day planner and a separate sheet of paper, which were provided for this hearing, indicate that they only paid one pet damage deposit of \$300.00, not two. When questioned as to why their own notes indicated only one deposit, they said that they may not have written it down. The tenants were unsure what date they paid both deposits, frequently changing their testimony. First they said they paid it before the tenancy began on September 15 or 16, then they paid it on November 1, then they paid it one week after November 1. It is the tenants' burden of proof, as the applicants in this claim, to demonstrate that they paid \$600.00 for a pet damage deposit to the landlord.

I find that the tenants are only entitled to the regular return of their deposit because they no longer have pets at the rental unit and the landlord did not transfer this pet damage deposit to the new owner. Therefore, the landlord is required to return this deposit to the tenants because she is no longer the landlord. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' pet damage deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to a return of the original pet damage deposit, totalling \$300.00, from the landlord.

I also dismiss the tenants' request for an order requiring the landlord to provide the second page of the tenancy agreement to the tenants. The tenants already have the one page of the tenancy agreement, as they submitted it for this hearing. I find that there was no second page to the agreement. I do not accept the tenants' evidence that the second page of the agreement confirmed that a second pet damage deposit was paid by the tenants. I accept and believe the testimony of the landlord and her agent that the tenancy agreement was only one page, it was signed at the bottom of that one page and the agreement clearly stated that the tenants were entitled to have two pets, a cat and a dog, for one pet damage deposit of \$300.00. I find it unreasonable and implausible that the landlord would have added a second page to the agreement

indicating that a second pet was an additional \$300.00 pet damage deposit when the two pets were already addressed on the first page of the agreement.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$300.00 against the landlord for the return of the entire pet damage deposit. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed without leave 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: February 15, 2017

Residential Tenancy Branch