



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing and the landlord called one witness. The tenant and the witness each gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised by either party. The testimony and evidence that is relevant to this application has been considered and is reflected in this Decision. The landlord has provided 7 pages of evidentiary material, most of which is not legible, and none has been provided by the tenant. The parties also offered to provide additional evidence after the hearing commenced, but I declined to receive any further evidence considering the conduct of the parties, and I found that the additional evidence offered would not have affected the outcome of this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of part of the security deposit?

Background and Evidence

The tenant testified that this 2-year fixed term tenancy began on June 1, 2016, however the tenant moved out of the rental unit on or about January 7, 2017. Rent in the amount of \$2,100.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit

from the tenant in the amount of \$1,050.00. The rental unit is a condominium apartment. A copy of the tenancy agreement has not been provided.

No move-in or move-out condition inspection reports were completed, and the tenant testified that at move-in, the previous tenant had done nothing to move out. It was chaotic, and the tenant and her partner had to help the previous tenant move out, make repairs and clean the rental unit before they could get settled in. The landlord paid the tenant for cleaning and her partner for repairs.

After the tenancy had ended the landlord's property manager returned \$800.00 of the security deposit to the tenant in a cheque when the parties met, and the tenant asked about the remaining \$250.00. The property manager replied that the landlord was keeping the balance for property management fees.

The tenant has not provided the landlord with a forwarding address in writing because the tenant was considering moving out of province, but served the Tenant's Application for Dispute Resolution by registered mail to the landlord which contains a forwarding address. The tenant is not certain when it was mailed, but within the time required.

The tenant seeks a monetary order for the balance of \$250.00, although the application for dispute resolution states \$300.00. The tenant also seeks recovery of the \$100.00 filing fee.

The landlord's witness testified that he is the landlord's agent and looks after the rental property. The tenancy agreement was a 2 year lease with a month-to-month option. The tenants at the beginning of the tenancy were the tenant named in this application and partner, and the partner passed away In November.

The witness met with the landlord on January 6, 2017 and the landlord gave the witness a cheque in the amount of \$1,300.00 payable to the tenant. Within a half hour, the witness met with the tenant and gave the tenant the cheque. \$1,050.00 of it was for return of the entire security deposit, and \$250.00 was added by the landlord to cover the tenant's cleaning costs. The landlord had acknowledged that the tenant had to clean at the beginning of the tenancy but the tenant never provided a bill or an invoice, and the landlord determined that paying a cleaning company to complete such services would cost \$250.00. The witness had told the tenant that the landlord was charged extra property management fees by the witness for the tenant's failure to honour the fixed term tenancy agreement, but that had nothing to do with the deposit.

The landlord has advised the witness that the tenant has cashed the \$1,300.00 cheque.

Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish that the loss exists and that it exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement.

The *Residential Tenancy Act* requires a landlord to return a security deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. In this case, the tenant provided a forwarding address in writing on the Tenant's Application for Dispute Resolution by registered mail, but the tenant does not know when. The parties agree that the landlord returned at least a portion of the security deposit to the tenant on January 6, 2017.

Neither party has provided any evidence to establish how much was paid. The landlord disputes any claim by the tenant, which is corroborated by the landlord's witness who testified that the cheque was to cover the entire security deposit and another amount for the tenant cleaning the rental unit because the tenant had never provided a bill. The tenant testified she had been previously paid for cleaning, and the amount returned was only \$800.00. Where it boils down to one person's word over another, and in the absence of any evidence to support the claim, the claim has not been proven. I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety 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: March 29, 2017

Residential Tenancy Branch