



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of the pet damage deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and the parties were served with their respective evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary award for damages as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy started in January, 2015 and ended July 31, 2016. The monthly rent throughout the tenancy was \$1,250.00. The tenant provided a security deposit of \$625.00 at the start of the tenancy and this was returned to her by the landlord within 15 days of ending the tenancy and providing a forwarding address.

The tenant testified that she provided a pet damage deposit of \$625.00 at the start of the tenancy to the landlord. The tenant said that the amount was paid in cash and no receipt was provided. In support of her position the tenant submitted into written evidence a copy of the tenancy agreement that indicates that a pet damage deposit of \$625.00 is required at the start of the tenancy and a bank statement showing a withdrawal of \$1,250.00 in December, 2014.

The landlord testified that she manages close to 50 rental properties and she does not request a pet damage deposit for any of the rental units. She said that she customarily issues receipts when provided security deposits in cash. The landlord testified that she has no record of ever requesting or receiving \$625.00 for a pet damage deposit from the tenant. She said that the pet damage deposit requirement in the tenancy agreement may have been written in as a matter of course but would have been waived.

Analysis

The claimant bears the burden of proof to show, on a balance of probabilities, that they are entitled to the relief sought. In the case at hand, as the tenant is making a claim for the return of a pet damage deposit pursuant to section 38 of the *Act*, the tenant must show that the landlord has failed to return the tenant's pet damage deposit in full within 15 days after the latter of the end of the tenancy or upon receipt of the tenant's forwarding address in writing.

While both parties were forthcoming in their evidence I find, on a balance of probabilities, that the tenant has not established that a pet damage deposit was paid at the start of the tenancy that should be returned. There is no written evidence that the pet damage deposit was paid to the landlord. The tenant testified that she does not recall receiving a receipt for either the security deposit or the pet damage deposit. The landlord returned the security deposit in full within the 15 days provided under the *Act*. It seems unlikely that a landlord would return a security deposit in full while withholding and disputing the pet damage deposit. The requirement for a pet damage deposit on the tenancy agreement is not evidence of a deposit having been paid. As the landlord suggested, it is possible that the requirement was waived at the start of the tenancy. I

also find the withdrawal of \$1,250.00 in December, 2014 to be insufficient evidence that a pet damage deposit was ever paid. In a competitive rental market the tenant may have withdrawn the funds so that she could use all or a portion of the cash for these deposits, but there is no evidence that was the case. I find that a withdrawal is not conclusive evidence that all of the funds were used to make a payment to the landlord. It is more typical for tenants to request and obtain a receipt for cash payments of this nature.

I find that there is insufficient evidence to conclude, on a balance of probabilities, that the tenant paid a pet damage deposit. Consequently, I dismiss the tenant's application. The tenant is not entitled to recover the filing fees for this application from the landlord.

Conclusion

The tenant's application is dismissed.

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: May 8, 2017

Residential Tenancy Branch