



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 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit/pet damage deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on November 04, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 5 pages of evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 15, 2016 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on November 15, 2016. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions and they were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit and/or pet damage deposit?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that:

- this tenancy began on July 01, 2014;
- the Tenant and the Landlord signed a fixed term tenancy agreement on June 29, 2014;
- the Tenant signed a second fixed term tenancy agreement on June 01, 2015;
- the Landlord signed this second agreement on June 07, 2016;

- rent was \$4,200.00 per month;
- the Tenant paid a security deposit of \$2,100.00;
- the tenancy ended on September 30, 2016;
- the Tenant mailed a forwarding address to the Landlord on October 12, 2016; and
- the security deposit was returned to the Tenants on September 30, 2016.

The Tenant stated that she when she paid her security deposit of \$2,100.00 she also paid a pet damage deposit of \$2,100.00. She stated that this deposit has never been returned to her and that she never gave the Landlord permission to retain any portion of the pet damage deposit.

The Agent for the Landlord stated that the Tenant initially paid a pet damage deposit of \$2,100.00 but that deposit was returned to her as she needed the money for rent. He stated that the Tenant never paid a pet damage deposit after this money was refunded to her.

The Agent for the Landlord and the Tenant agree that the \$4,200.00 initially paid for a pet damage deposit and security deposit was paid in cash on June 29, 2014. The Agent for the Landlord stated that the Tenant was provided with a receipt for the cash payment, although he did not retain a copy of the receipt. The Tenant stated that she was not provided with a copy of the receipt for the \$4,200.00 payment.

The Agent for the Landlord and the Tenant agree that the \$4,200.00 pet damage deposit/security deposit payment was recorded on the tenancy agreement that was signed on June 29, 2014 and that this entry was subsequently crossed out. The parties also agree that there is a notation on this agreement, which is initialed by both parties, which reads: "return the pet deposit of \$2100 to" the Tenant.

The Agent for the Landlord stated that the notation on the tenancy agreement was made and initialed on June 29, 2014, when the money was returned.

The Tenant stated that \$2,100.00 pet damage deposit was never returned to her. She stated that she initialed the notation on the tenancy agreement on July 01, 2015 and she initialed the notation because the Agent for the Landlord told her that this deposit would be returned to her at the end of the tenancy.

The Agent for the Landlord and the Tenant agree that the second fixed tenancy agreement indicates that a security deposit of \$2,100.00 was paid and that a pet damage deposit was not paid.

The Tenant stated that a friend was present when she paid the pet damage deposit and security deposit, although she submitted no evidence from the friend who witnessed the payments.

Analysis:

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Tenant paid a security deposit of \$2,100.00 and that this deposit was returned to her when the tenancy ended on September 30, 2016. As this deposit was returned to the Tenant in accordance with section 38(1) of the *Act*, I find there is no need for me to determine whether it must be returned to the Tenant.

There is a general legal principle that places the burden of proving a claim on the person who is seeking compensation. In these circumstances, the burden of proving that the Tenant paid a pet damage deposit and that the deposit was not returned rests with the Tenant.

On the basis of the undisputed testimony, I find that the Tenant paid a pet damage deposit of \$2,100.00 when she paid the security deposit of \$2,100.00.

I find that the Tenant has submitted insufficient evidence to support the Tenant's testimony that the \$2,100.00 pet damage deposit was never returned to her or to refute the Agent for the Landlord's testimony that the pet damage deposit was returned to her on June 29, 2014 as she needed the money for rent.

When an applicant provides evidence of the facts in one way and the respondent provides an equally probable explanation of the facts, the applicant has not met the burden of proof unless the applicant provides evidence to support the claim. In these circumstances the Tenant has submitted no evidence to corroborate her testimony that the pet damage deposit was not returned to her.

Conversely, I find that the tenancy agreement that was signed on June 29, 2014, specifically the initialed notation that declares the pet deposit was returned to the Tenant, corroborates the Agent for the Landlord's testimony that the pet damage deposit was returned. I find that the Agent for the Landlord's testimony that the pet damage deposit was returned because the Tenant required the money for rent is simply more credible than the Tenant's testimony that she initialed this entry simply because she was told the deposit would be returned at a future date.

I find that the second tenancy agreement, which indicates a security deposit of \$2,100.00 was paid but a pet damage deposit was not paid, further corroborates the Agent for the Landlord's version of events in regards to the pet damage deposit. I find it extremely unlikely that the Tenant would have signed an agreement that declares a pet damage deposit was not paid if the Landlord was still holding her pet damage deposit.

As the parties presented opposing testimony regarding the return of the pet damage deposit, I find that the tenancy agreements submitted in evidence are the most compelling evidence before me and I find they corroborate the Landlord's submission that the pet damage deposit was returned.

As there is no dispute that the Tenant initially paid a pet damage deposit and security deposit of \$4,200.00, I find that the Tenant's testimony that a friend was present when she paid these deposits has little evidentiary value.

As I have concluded that the pet damage deposit was returned to the Tenant sometime prior to the end of this tenancy, I dismiss her claim for the return of that deposit.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I therefore dismiss her application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution 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: May 04, 2017

Residential Tenancy Branch