



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Tenant:

- authorization to obtain a return of all or a portion of the security deposit and/or pet deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Landlord:

- a monetary order for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit and/or pet deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of the respective applications and evidence on file.

Issues

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit or is the tenant entitled to return of the security deposit and/or pet deposit including double the amount? Is either of the parties entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began in June 2013. The monthly rent was \$600.00 payable on the 1st day of each month. The parties agreed the tenant paid a security deposit of \$300.00 at the start of the tenancy which was returned in full to the tenant on April 8, 2017. The tenancy ended on March 31, 2017. A move-in condition inspection report was not completed or provided. A move-out condition inspection report was not completed. The tenant provided a forwarding address in person to the landlord on April 03, 2017 during the final walk through inspection. Neither party was able to provide a copy of the initial tenancy agreement.

The tenant is claiming that in addition to the \$300.00 security deposit she also paid a \$300.00 pet deposit at the beginning of the tenancy. The tenant is claiming return of this \$300.00 pet deposit. The tenant submitted a copy of her bank statements reflecting a withdrawal of \$600.00 on May 24, 2013 and a subsequent e-transfer of \$600.00 on May 28, 2013. The tenant alleges the first withdrawal is evidence of the \$300.00 security deposit and \$300.00 pet deposit paid on the date the tenancy agreement was signed. The tenant submits she paid cash to the landlord's agent C.L., whom she believes to be the landlord's daughter. She testified she was provided with a cash receipt but could not locate the receipt as it was four years ago. The tenant testified that throughout her tenancy she only dealt with the landlord's daughter C.L. and the agent C.M. only became involved at the end of the tenancy.

The landlord testified that a pet deposit was not collected at the start of the tenancy and that the tenant has not presented any receipt in proof of such. The landlord also argues the tenant was not able to furnish a tenancy agreement supporting the payment of a pet deposit.

The landlord is claiming \$197.02 in cleaning charges incurred to clean up cat urine off the furnace room floor and re-painting the floor with a specialized paint to remove the smell of cat urine. The landlord submitted pictures of the condition of the floor taken by the cleaners and statements from the painters with respect to the smell of cat urine from the closet area. The landlord is also claiming \$50.00 in costs incurred to dump a rocking chair left behind by the tenant. An invoice and payment of this dumping fee was submitted by the landlord. The landlord submits they were not made aware of the cat urine smell and damage until April 13, 2017 after the security deposit had already been returned. The landlord's claim was filed on August 1, 2017.

The tenant argues she cleaned the rental unit with the help of five other people on March 30, 2017. Not all the cleaning was completed on this day as the carpets still needed to be cleaned. She was cleaning the carpets the following day when the landlord's agent C.L. showed up for the walk through inspection. She still needed more time which was not objected to by C.L. and a walk through was rescheduled for April 3, 2017. C.L. was happy with the cleaning work but did mention the utility closet needing attention. The tenants' partner then cleaned the utility closet. The walk through on April 3, 2017 was rushed through and no inspection report was completed. No agreement or discussion took place with respect to withholding any deposit. The tenant submits that it was only after she requested return of her pet deposit on April 9, 2017 that there was any mention of a claim for damages by the landlord.

Analysis

There was a dispute over whether or not a pet deposit was paid in addition to a security deposit at the beginning of the tenancy. On this point, I accept the tenant's testimony and bank statement evidence of two separate \$600.00 withdrawals at the beginning of the tenancy and find that on a balance of probabilities the tenant did pay a \$300.00 pet deposit in addition to a \$300.00 security deposit. The landlord did not introduce any evidence in the form of a witness statement or testimony from C.L. who collected the deposit on behalf of the landlord at the beginning of the tenancy. C.L.'s testimony would have been helpful in supporting the landlord's argument. Rather the landlord relied solely on the fact that the tenant failed to produce a tenancy agreement or a receipt for the deposit. I find that it is reasonable that the tenant could not locate the original receipt after 4 years. I also note that the responsibility to keep and maintain a tenancy agreement also lies with the landlord. Neither party was able to provide a copy of the original agreement in this case which could have prevented this dispute. Further, the landlord failed to provide any of its own statements of deposit and rent payments collected which could have further supported their argument that a pet deposit was not collected.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit or pet deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I find the tenant did provide a forwarding address to the landlord on April 3, 2017. The tenant's pet deposit was not refunded nor did the landlord file an application to claim against the deposit within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the pet deposit and award an amount of **\$600.00**, which is double the original pet deposit of \$300.00.

As the tenant was successful in her application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of **\$700.00**.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find the landlord's testimony and invoices for the cleaning and garbage removal support the landlord's claim for loss amounting to \$247.02. Even though the tenant may have attempted to fully clean the rental unit, I accept the landlord's evidence that the utility closet was not left in a reasonably clean state and the landlord incurred an expense for garbage removal. The tenants in her own testimony acknowledged that the landlord had initially pointed out a concern with the utility closet. Although the initial walk through may have been rushed and no condition inspection report was completed, I accept that this damage was discovered by the landlord afterwards and it was caused by the tenant. The landlord is entitled to an award of **\$247.02**.

As the landlord was also successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant, for a total monetary award of **\$347.02**.

Offsetting the monetary awards, the tenant is entitled to a monetary order of **\$352.98**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of **\$352.98**. 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.

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: September 27, 2017

Residential Tenancy Branch