



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 scheduled to deal with monetary cross applications. The landlord applied for compensation for damage to the rental unit, damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. The tenant applied for return of the security deposit and pet damage deposit; and, other damages or loss.

Preliminary Issues

1. Service of hearing documents and evidence

The landlord testified that she sent her hearing package, some documentary evidence, and a disk containing photographs to the tenant via registered mail within three days of November 8, 2017. The tenant received the registered mail package, which included approximately 20 pages of documents, but claimed the package did not contain photographs or a disk. The tenant notified the landlord that she did not receive any photographs and the landlord sent a disk to the tenant via registered mail, which the tenant received on January 5, 2018. The tenant stated she did not attempt to view the content of the disk but her advocate did in June 2018 in preparation for this proceeding.

Both parties were adamant in their positions as to whether photographs were provided to the tenant in the registered mail sent in November 2017; however, I was prepared to admit those photographs since the landlord did provide the tenant with a disk in early January 2018, whether it be the first time or the second time, and the content of the disk was viewable according to the tenant's representative.

In January 2018 the landlord sent the tenant a registered letter dated January 20, 2018 including an offer to settle. The tenant received the registered letter but the parties were unsuccessful in reaching a mutually agreeable resolution.

The landlord sent to the tenant additional evidence, including a written submission that contained different amounts than those appearing on the landlord's original claim, via registered mail on May 28, 2018. The tenant received this package.

The tenant sent her hearing package and supporting documents to the landlord in a single registered mail package on April 10, 2018. The landlord received the tenant's package.

I was satisfied that the parties were using an acceptable method of service, registered mail, and sent their packages within the service deadlines. Accordingly, I accepted the Application for Dispute Resolution and proceeded to resolve them; however, there was another preliminary matter to resolve with respect to the landlord's monetary claim that I describe below.

2. Landlord's monetary claim

The tenant submitted that she was uncertain as to the total amount sought by the landlord because she had been provided varying totals while awaiting this hearing.

In addition to the Monetary claim of \$12,550.00 set out in the landlord's Application for Dispute Resolution, the landlord had sent the tenant an offer to settle for \$5,950.00 in January 2018, had filed a Notice of claim in the Small claims court in April 2018 indicating the landlord was pursuing the tenant for \$13,726.00; and, the landlord's package of May 28, 2018 included different amounts again.

The landlord explained that the original Application for Dispute Resolution was based on estimates only; the January 20, 2018 letter was only an attempt to settle and based on expenses incurred to that date; the landlord filed a Notice of Claim in Small Claims to cover all her options; and the package mailed of May 28, 2018 contained the actual costs after the repairs had been made. The landlord pointed me to page 3 of her written submission that was sent to the tenant on May 28, 2018.

In turning to the mailing of May 28, 2018 I note that it is several pages long and it is written in such a way that it appears to be a response to the tenant's counter-claim. On the third page is reference to receipts totalling \$8,788.89 and that new cabinetry would cost "around" \$4,000.00 and if the cabinetry were added to the receipts the total repairs would be \$12,788.89.

With respect to the landlord filing with the Small Claims court, I informed the parties that the Residential Tenancy Branch has exclusive jurisdiction over residential tenancy disputes where the tenancy falls under the *Residential Tenancy Act* and the monetary claim does not exceed \$35,000.00. The role of the Small Claims court is to enforce a Monetary Order issued by an Arbitrator with the Residential Tenancy Branch. Accordingly, I proceeded to explore whether the Act applies to the tenancy agreement between the parties.

I heard that the landlord had rented to the tenant a mobile home on land that is owned by the landlord and that the tenant had exclusive possession of the rental unit with rights ordinarily associated to a tenancy, including privacy, in exchange for payment of rent. Upon hearing from both parties, I was satisfied that the parties had a landlord/tenant relationship and the *Residential Tenancy Act* applied to their tenancy agreement and the rental unit.

I informed the parties that I would reserve my decision as to how to proceed with the landlord's application given the varying amounts presented to the tenant, including the Notice of Claim filed by the landlord in Small Claims court. For the remainder of the hearing, I turned to hearing the tenant's monetary claim.

Upon further review and deliberation, I find it would be prejudicial to proceed to deal with the landlord's claims at this time. I make this decision because I find the landlord has provided varying claims against the tenant with respect to the same matters; the landlord did not prepare and serve an Amendment in accordance with the Rules of Procedure; and, evidence such as receipts were provided to the tenant on a disk and very close to the hearing date along with a document indicating they were in response to the tenant's counter-claim. Overall, I find the amount sought by the landlord is unclear and confusing as described by the tenant.

Dispute resolution proceedings are based on the principles of natural justice and I am bound to conduct a fair hearing. To have a fair hearing, the respondent must be made aware of the claim(s) against them including the amount sought, the basis for the claim, and evidence to support the claim. This is why, under section 59 of the Act, an applicant is required to provide the respondent with the full particulars of their claim and the Rules of Procedure require detailed monetary calculations and service of certain documents and evidence. If an applicant seeks to modify a claim it is to be accomplished by way of an Amendment that is served upon the respondent so that it is very clear to the respondent that the applicant is seeking to modify the claim. While an Amendment may be accepted without the completion of the Amendment form produced by the Residential Tenancy Branch, I am of the view that a modified claim should not appear for the first time in on page three of a type-written submission written in response to the tenant's counter-claim and include amounts that are indicated as being "around" \$4,000. Also of consideration is that the landlord also filed a Notice of Claim in small claims with yet a different amount claimed and the landlord expects that the tenant to respond in two different forums for the same matter. As such, I find the landlord's claims against the tenant are confusing and that to proceed would breach the principles of natural justice. Therefore, I decline to further consider the landlord's claims against the tenant and **I dismiss the landlord's claims with leave to reapply.**

I strongly suggest to the landlord that she withdraw the claim made in Small Claims court since Small Claims court does not have jurisdiction to resolve these types of disputes and there will be less confusion when/if the landlord re-applies with the Residential Tenancy Branch.

Issue(s) to be Decided

1. Is the tenant entitled to return of the security deposit?
2. Did the tenant pay a pet damage deposit and if so, is the tenant entitled to its return?
3. Is the tenant entitled to compensation for the other amounts claimed against the landlord?

Background and Evidence

The parties entered into a tenancy agreement on July 16, 2016 for a tenancy set to commence July 30, 2016. The tenant paid a security deposit of \$600.00. The parties were in dispute as to whether a pet damage deposit of \$300.00 was also paid. The parties were in agreement that the landlord did not prepare a move-in inspection report.

The tenancy ended on September 30, 2017. The tenant stated that at the move-out inspection the landlord had a "cleaning checklist" with her but that she was not presented a move-out inspection report or asked to sign such a document. The landlord submitted that the tenant refused to sign the move-out inspection report. Upon further probing, the landlord acknowledged that the document she had with her during the move-out inspection with the tenant was document entitled "cleaning checklist". The "cleaning checklist" was included in evidence before me and it does not contain all of the information that is required on a move-out inspection report.

The tenant sent a text message to the landlord with a forwarding address on October 4, 2017. The tenant sent a forwarding address to the landlord by registered mail on October 20, 2017 which the landlord picked up on October 31, 2017.

The tenant did not authorize the landlord to make any deductions from the security deposit and/or pet damage deposit, if one was paid.

On October 31, 2017 the tenant received from the landlord a copy of the "cleaning checklist" and a cheque for \$50.00. The landlord indicated in her letter to the tenant that she was deducting \$550.00 for cleaning and repairs. The tenant did not agree with the deductions and did not cash the \$50.00 cheque. On November 8, 2017 the landlord filed her Application for Dispute Resolution seeking to retain the security deposit in partial satisfaction of cleaning and damage to the rental unit. For reasons already provided in this decision, I have dismissed the landlord's claims with leave to reapply.

As for a pet damage deposit, the landlord stated the tenant did not pay one. The landlord stated that the tenancy agreement provides that a pet damage deposit of \$300.00 will be paid if the tenant has a pet and the tenant did have cats but that the landlord only intended to enforce this term if the tenant obtained a dog.

The tenant stated that when the tenancy formed there was no discussion of getting a dog although that was something that was discussed months later.

The tenant submitted that the security deposit and pet damage deposit, totalling \$900.00 was paid in two installments, as follows: \$560.00 that was e-transferred to the landlord on July 21, 2016 and \$340.00 that was given to the landlord in cash on or about August 5, 2016. The tenant testified that the cash was given to the landlord in the rental unit; and, the landlord did not issue a receipt although the tenant did not want a receipt. The tenant provided an email from Interac to show the landlord accepted the e-transfer of \$560.00 on July 22, 2016 and a withdrawal of \$340.00 was made from her mother's bank account on August 4, 2018. The tenant explained that her mother lived in the rental unit with her and owed one or more of the cats.

The landlord acknowledged receipt of the \$560.00 via e-transfer and the balance of \$40.00 was received from the tenant in cash at the rental unit. The landlord stated that whenever the tenant paid cash, including rent payment, the tenant did not want a receipt so the landlord did not issue receipts.

In addition to seeking return of the deposits in the sum of \$900.00, the tenant seeks recovery of costs for registered mail, the filing fee, lost wages to participate in this hearing, and the time of her agent spent preparing for and participating in this proceeding. I informed the parties that the Act does not provide for recovery of costs incurred to participate or prepare for a dispute resolution proceeding with the exception of the filing fee. Accordingly, I dismissed these claims summarily with the exception of the filing fee which I will consider further in the analysis portion of this decision.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the tenant's request for return of a security deposit and pet damage deposit.

The parties were in agreement the landlord collected a security deposit of \$600.00 by way of an e-transfer of \$560.00 and \$40.00 in cash paid on or about August 5, 2016. The landlord had made a claim against the security deposit but I have dismissed the claim, with leave, for reasons provided in the Preliminary Issues section of this decision. I am satisfied the landlord filed her claim against the security deposit

within 15 days of receiving the tenant's forwarding address using a proper method of service (registered mail) which is why I do not further consider doubling the deposit. Even if the landlord makes another Application for Dispute Resolution for compensation against the tenant, the time limit for making a claim against the security deposit has passed. Therefore, I grant the tenant's request for a Monetary Order for return of the security deposit.

The parties were in dispute as to whether the landlord collected a pet damage deposit of \$300.00 from the tenant. The crux is this dispute was whether the tenant gave the landlord \$40.00 or \$340.00 in cash on or about August 5, 2016 (with \$40.00 being the balance of the security deposit that was due). The tenant provided evidence that \$340.00 was withdrawn from her mother's bank account on August 4, 2016 in support of her position that a \$300.00 pet deposit and the \$40.00 that remained outstanding for the security deposit was given to the landlord on August 5, 2016. I find the tenant has provided sufficient evidence to demonstrate she had the funds available to pay the \$40.00 balance of the security deposit and a pet damage deposit of \$300.00; however, the landlord denied receiving of the additional \$300.00 in cash so the issue becomes: did the tenant give the landlord an additional \$300.00 that had been withdrawn from the bank on August 4, 2016?.

Paying in cash is inherently problematic without documentation to support the payment was given. To avoid disputes concerning cash payments, the Act requires that a landlord give the tenant a receipt where the tenant pays rent in cash. This requirement for the landlord to give a receipt is not optional and is to be given even if the tenant does not ask for or require a receipt. Although the Act does not have this same requirement for payment of security deposits or pet damage deposits in cash, if the landlord chooses not to issue a receipt for a cash deposit then the landlord should have other documentation to demonstrate the amount paid for deposits in cash. Such documentation may include the tenancy agreement.

The tenancy agreement before me provides that the tenant would be required to pay a \$300.00 pet damage deposit if the tenant had a pet. The parties provided consistent testimony that the tenant had pet cats and that the landlord was well aware that the tenant would have cats in the rental unit from the outset of the tenancy. The tenancy agreement does not limit the payment of a pet damage deposit to a pet dog only, as suggested by the landlord. Since the tenant had pet cats, I find the tenancy agreement is additional support of the tenant's position.

I find the tenant's banking documents, coupled with the tenancy agreement that required the tenant to pay a pet damage deposit if the tenant had pets, is sufficient to satisfy me, based on the balance of probabilities, that the tenant paid a pet damage deposit of \$300.00 in addition to the security deposit. Since claims against a pet damage deposit are for pet damage only and the time limit for making a claim against the pet damage deposit has since passed I grant the tenant's request for a Monetary Order for return of the pet damage deposit.

The tenant was successful in establishing an entitlement to return of the security deposit and pet damage deposit. Accordingly, I further award the tenant recovery of the \$100.00 filing fee she paid for her application.

In keeping with all of my findings and awards as described above, I provide the tenant with a Monetary Order in the sum of \$1,000.00.

Conclusion

The landlord's monetary claim has been dismissed with leave to reapply.

The tenant is provided a Monetary Order in the amount of \$1,000.00 for return of the security deposit, pet damage deposit, and recovery of the filing fee. The balance of the tenant's monetary claims is dismissed without leave.

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: July 06, 2018

Residential Tenancy Branch