



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, MNDCT, FFT

Introduction

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

- a monetary order for the tenant to pay a pet damage deposit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- a monetary order for the landlord to pay utilities, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties intended to call witnesses, however I found that they were not necessary, as they only intended to provide hearsay evidence and irrelevant information unrelated to these applications. This hearing lasted approximately 37 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Is the landlord entitled to retain the tenant's security deposit towards a monetary order for the tenant to pay a pet damage deposit?

Is the tenant entitled to a return of double the value of her security deposit?

Is the tenant entitled to a monetary order for utilities?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on November 12, 2016 and ended on March 15, 2018. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant and the landlord continues to retain this deposit in full. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The landlord did not have written permission to keep any amount from the tenant's security deposit.

The tenant stated that she provided a written forwarding address to the landlord on May 24, 2018 by way of personally handing a letter to the landlord's mother-in-law. The tenant provided a copy of the letter. The landlord said that he did not get a letter from the tenant and he does not have a mother-in-law. The landlord said that he only got the tenant's address by way of her application for dispute resolution, which lists a different address. The landlord filed his application for dispute resolution on July 13, 2018, to keep the tenant's security deposit.

The landlord seeks a monetary order of \$1,100.00 for a pet damage deposit, that he said the tenant failed to pay during the tenancy. He claimed that he wanted to offset the tenant's security deposit of \$1,050.00 towards this amount. The landlord stated that the tenant did not declare her pet on the tenancy agreement. The tenant claimed that she did not pay a pet damage deposit to the landlord because he did not require her to pay it during the tenancy since she only had a cat, not a dog.

The tenant seeks a monetary order for double the amount of her security deposit of \$1,050.00, totalling \$2,100.00. She said that the landlord did not return her deposit within 15 days after the tenancy ended. The tenant also seeks \$198.83 for hydro and

gas utilities that she said the landlord verbally agreed to pay her half the amount between January and March 2018. The landlord denied this agreement. The tenant provided a copy of her utility bills but no receipts. She stated that the bills show that she paid some partial amounts and she did so through her bank but she did not provide these bank records. She claimed that the landlord told her to turn up her heat in order to dry out the ceiling and walls, due to a roof water leak that came through the ceiling. The landlord said that the tenant did not turn up the heat and it caused a buildup of moisture.

Analysis

Landlord's Application

Section 20 of the *Act* states the following, in part:

- 20 *A landlord must not do any of the following:*
- (c) require a pet damage deposit at any time other than*
 - (i) when the landlord and tenant enter into the tenancy agreement,*
 - or*
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property.*

I dismiss the landlord's application for a monetary order of \$1,100.00 for a pet damage deposit and to retain the security deposit of \$1,050.00 towards this amount. The landlord cannot require a pet damage deposit when the tenant no longer lives in the unit and the tenancy is over. As per section 20(c) of the *Act* above, the landlord cannot require a pet damage deposit at any time other than when the parties entered into the tenancy agreement or at the time the tenant acquired the pet during the tenancy.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee paid for his application from the tenant.

Tenant's Application

I dismiss the tenant's application for \$198.83 in hydro and gas utilities. The landlord disputed the tenant's claim that he verbally agreed to pay for half of the utilities. The

tenant did not provide a written agreement. The tenant agreed that utilities were not included in her rent. The tenant provided a copy of some utility bills but she did not provide proof that she paid the above total amount of \$198.83 for utilities. She claimed that I could infer that she paid partial amounts because they were referenced on her utility bills, not any receipts, but I find that the tenant must show that she herself paid the amounts, how they were paid, when they were paid and which utilities they covered. She stated that she paid the amounts through her bank and I find that she had ample time to obtain these documents from her bank and submit it for this hearing, but she failed to do so.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on March 15, 2018. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit to the tenant.

The tenant said that she served the landlord's mother-in-law with her written forwarding address. When I asked her whether the person she served was an agent of the landlord, the tenant did not know. The landlord claimed that he did not receive it and he does not have a mother-in-law. Section 88(b) of the *Act* permits the tenant to serve an agent of the landlord in person with her forwarding address, but I find that the tenant failed to prove that the person she served was an agent of the landlord.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit of \$1,050.00. I find that the tenant is only entitled to receive the original amount of her security deposit, totalling \$1,050.00, from the landlord. I find that the tenant is not entitled to the return of double her deposit even though the landlord did not return the deposit to the tenant within 15 days after the tenancy ended on March 15, 2018, because I find that the tenant did not prove service of her

forwarding address to the landlord's agent, only by way of her application for dispute resolution, so the doubling provision was not triggered.

As the tenant was only partially successful in her application, I find that she is not entitled to recover the \$100.00 filing fee paid for her application from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary Order in the tenant's favour in the amount of \$1,050.00 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. 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.

The remainder of the tenant's application 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: November 29, 2018

Residential Tenancy Branch