



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

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

- A monetary order for damages or compensation pursuant to section 67;
- An order for a return of all or part of a security deposit and a pet deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both the tenants attended the hearing and were represented by JT ("tenant"). The landlord attended the hearing represented by TC ("landlord"). As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a doubling of the security deposit?
Should the landlord be required to return the pet damage deposit?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began in August of 2015. A security deposit in the amount of \$400.00 was given to the property management company ("Company D"). On June 12, 2016, the current landlord took over as property manager/landlord for the rental unit and Company

D transferred the \$400.00 security deposit to the current landlord. A copy of the cheque was provided as evidence.

On September 14, 2016, a number of months after the Company D was no longer the landlord, the tenant requested permission from Company D to allow a small dog in the rental unit. Company D responded on September 26, 2016, allowing the dog if a half month's rent was paid as a pet damage deposit. A copy of the email exchange was provided as evidence.

The tenancy ended on October 19, 2018. The parties conducted a move-out condition inspection report and the tenant gave the landlord his forwarding address on the inspection report on October 19, 2019.

The landlord testified that he returned the tenant's full security deposit in the amount of \$400.00 on November 1, 2018 by regular mail. He further testified that in his office, mail is diligently sent out daily due to the critical timelines involved in his industry. He particularly remembers this security deposit because the owner of the rental unit was hesitant to return the deposit in light of alleged damages caused during the tenancy. The landlord also testified that during the month of November 2018, a postal strike was delaying the delivery of mail.

The tenant acknowledges receiving the cheque on November 10, 2018 by regular mail.

Both the landlord and tenant testified they have diligently tried to contact Company D to determine the status of the pet damage deposit. Neither party was successful in getting an adequate response from Company D. The landlord also contacted the owner of the rental unit who indicated he did not receive the pet damage deposit from Company D or the tenant. The landlord provided a copy of an email dated January 13, 2019 from the owner as evidence.

The tenants submit that they paid the pet damage deposit however they do not have proof of payment to substantiate this claim. The tenants cannot recall whether they paid it to Company D or their current landlord who is named in these proceedings. The tenant contends that the pet damage deposit is either still being held by Company D or that it was lost in the transfer between Company D and the current landlord.

Analysis

Doubling of the security deposit

The tenants rely on sections 38(1) and 38(6) of the Act in seeking a doubling of the security deposit. Both are reproduced below:

38(1)

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

38(6)

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The burden of proof lies upon the tenants to show that landlord did not comply with section 38(1) of the *Act* and return the security deposit within 15 days.

I accept the landlord's testimony that on November 1, 2018, 13 days after obtaining the tenants' forwarding address on October 19th, the tenant's security deposit was mailed out. I also accept that there was a postal strike during the month of November which may have delayed the tenants' receipt of it until November 10, 2018. It is altogether plausible that the delay was the fault of the postal strike and not due to the inaction of the landlord.

Although the tenants did not receive the return of their security deposit until November 10, 2018 I do not find the landlord failed to comply with section 38 (1). I dismiss the tenants' claim for a doubling of the security deposit.

Pet Damage Deposit

The tenants were not able to provide conclusive proof that the landlord in these proceedings retains their pet damage deposit. They did not provide a receipt, bank

statement or cancelled cheque to substantiate their claim. The tenants' submission that the deposit was taken by Company D then lost between Company D and the current landlord is strictly conjecture. I note the tenants' chronology of events has them contacting Company D for permission for a pet in September 2016 when Company D was no longer their landlord as of June 2016.

The landlord provided testimony and copies of emails to show he has made diligent efforts to find proof of the payment to respond to the tenants' claim. Without any evidence to prove otherwise, on a balance of probabilities, I find the tenants' claim cannot be substantiated. The tenant's claim for a return of the pet deposit is dismissed.

As the tenants were not successful in their claim, they will not recover the filing fee from the landlord.

Conclusion

The tenants' 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: March 14, 2019

Residential Tenancy Branch