



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 22, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on December 17, 2019 as a teleconference hearing. The Tenant and the Tenant's Counsel, S.L., attended the hearing and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant, S.L., and I were the only persons who had called into this teleconference.

The Tenant testified the Application and documentary evidence package was served to the Landlord and the Landlord's Agent by registered mail on September 3, 2019. The Tenant provided copies of the registered mail receipts in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Respondents are deemed to have been served with the Application and documentary evidence on September 8, 2019, the fifth day after their registered mailings. The Landlord did not submit any documentary evidence in response to the Application.

The Tenant and S.L. were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant stated she moved into the rental unit on March 1, 2019, joining her roommate who had started his tenancy of the rental unit on August 1, 2018. The Tenant stated that the original tenancy agreement was amended on March 1, 2019 to include her as a Tenant on the agreement between the parties. The Tenant stated that the monthly rent of \$1,320.00 was due to be paid to the Landlord on the first day of each month. The Tenant stated that she did not pay a security deposit, however, when she joined the tenancy, she was required to pay a pet damage deposit in the amount of \$525.00 as she had to pets.

The Tenant stated that she provided her written notice to end tenancy to the Landlord on June 28, 2019 with an effective date of July 31, 2019. The Tenant stated that she provided her forwarding address to the Landlord on July 7, 2019 via email. The Tenant provided a copy of her notice to end tenancy as well as a copy of her forwarding address which was sent to the Landlord in support.

The Tenant stated that she moved out of the rental unit on July 31, 2019 and took her pets with her. The Tenant stated that her roommate continues to reside in the rental unit, however, she is seeking the return of her pet damage deposit that she paid to the Landlord in the amount of \$525.00. The Tenant stated that no move out condition inspection was completed and that she has not consented to any deductions from the deposit.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing **or the end of the tenancy, whichever is later**. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenant stated that she joined a pre-existing tenancy on March 1, 2019, moving into the rental unit with a roommate who had held the tenancy since August 1, 2018. I accept that the Tenant was required to pay a pet damage deposit in the amount of \$525.00 to the Landlord as she had two pets.

The Tenant stated that she provided the Landlord with her notice to end tenancy on June 28, 2019. The Tenant's Notice notified the Landlord that the Tenant was intending on moving out on July 31, 2019 and wished to be removed from the tenancy agreement. I find that the Tenant did not indicate that the tenancy was ending completely on July 31, 2019 and both roommates were moving out. Instead, the original occupant remained in the rental unit.

While the Tenant moved out of the rental unit, I find that the tenancy continued with the original occupant who began the tenancy on August 1, 2018 and continues to occupy the rental unit to this date, as stated by the Tenant. As such, I find that the tenancy is still ongoing.

I accept that the Tenant has provided the Landlord with her forwarding address on July 7, 2019. However, as the tenancy has not yet ended, I find that the Landlord is not yet required to repay the Tenant her pet damage until such a time that the tenancy ends, pursuant to Section 38 of the *Act*.

I find that the Tenant's Application is premature, therefore, I dismiss the Tenant's claim with leave to reapply once the tenancy has ended and in accordance with Section 38 of the *Act*.

As the Tenant was not successful with her Application, I find that she is not entitled to the return of the filing fee.

Conclusion

The Tenant's Application for the return of the pet damage deposit is premature as the tenancy has not yet ended. The Tenant's claim is therefore dismissed with leave to reapply once the tenancy has ended and if the Landlord does not comply with Section 38 of the *Act*.

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: December 17, 2019

Residential Tenancy Branch