



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

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

- a monetary order for \$1,200 representing two times the amount of the pet damage deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:54 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The tenant attended the hearing, as did a co-tenant ("**JF**") who is not named a party to this application. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, JF, and I were the only ones who had called into this teleconference.

The tenant testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on Jan 22, 2020. I find that the landlord was deemed served with this package on January 27, 2020, five days after the tenancy mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$1,200;
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting April 15, 2017 and ending October 15, 2017. The tenancy was converted into a month to month tenancy following the end of the fixed term. Monthly rent was \$1,200 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$600 and a pet damage deposit of \$600. The tenant consented to the landlord keeping the security deposit in lieu of payment of the last half-months' rent. The landlord has not returned the pet damage deposit.

The tenancy ended on October 15, 2018. On that same day, the landlord, tenant, and JF conducted a brief inspection of the rental unit, following which the tenant gave the landlord her ID, which listed her new address. The tenant testified, and JF confirmed, that the landlord wrote down the forwarding address and returned the ID to the tenant.

The tenant testified that she also texted the landlord on the following dates regarding the return of the pet damage deposit:

- October 22, 2018;
- November 17, 2018;
- December 3, 2018;
- December 9, 2018;
- January 2, 2019; and
- June 2, 2019.

The tenant did not enter any of these text messages into evidence. I am not certain if any of these text messages contained the tenant's forwarding address.

The tenant testified that she spoke to the landlord on one occasion after the end of the tenancy. She testified that the landlord advised her that she was keeping the pet damage deposit because the ice maker on the refrigerator was broken. The tenant denied causing this to break.

The tenant testified that, to her knowledge, the landlord has not filed a claim against the security deposit at the Residential Tenancy Branch.

Analysis

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Based on the testimony of the tenant and JF, I find that the tenancy ended on October 15, 2018 and that the tenant provided her forwarding address in writing to the landlord on that same date. I find that the tenant consented to the landlord retaining the security deposit.

I find that the landlord has not returned the pet damage deposit to the tenant within 15 days of receiving her forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant.

It is not enough for the landlord to allege the tenant caused damage to the rental unit. She must actually apply for dispute resolution, claiming against the security deposit or pet damage deposit, within 15 days from receiving the tenant's forwarding address.

The landlord did not do this. Accordingly, I find that she has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim against the pet damage deposit within the specified timeframe:

- (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 language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that they pay the tenant double the amount of the pet damage deposit (\$1,200).

As the tenant has been successful in her application, she are entitled to have the filing fee of \$100.00 repaid by the landlord.

Conclusion

Pursuant to sections 38, 62, and 72 of the Act, I order that the landlord pay the tenant \$1,300, representing the following:

Double the deposit	\$1,200.00
Filing fee	\$100.00
Total	\$1,300.00

The tenant must serve a copy of this decision and attached monetary order on the landlord as soon as possible.

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: May 21, 2020

Residential Tenancy Branch