



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Regular Post on July 2, 2020. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the tenancy ended on May 31, 2019 and that the tenant had originally paid a \$400.00 security and a \$400.00 pet damage deposit. Both parties also confirmed the tenant provided her forwarding address in writing for return of the security and pet damage deposits on May 31, 2020 on the "Security/Pet Damage Deposit Statement" on the completed condition inspection report for the move-in (April 4, 2019) and move-out (May 31, 2019).

The tenant applied for a monetary claim of \$800.00 which consists of:

\$300.00	Security Deposit
\$400.00	Pet Damage Deposit
\$100.00	Filing Fee

The tenant clarified that she seeks \$850.00 for:

\$750.00	Security/Pet Damage Deposits
\$100.00	Filing Fee

The tenant stated that at the end of tenancy she had agreed to a \$50.00 deduction for painting as listed on the "Statement". The tenant stated that she received and cashed a cheque for \$350.00 from the landlord which was for return of \$300.00 for an overpayment of rent from BC Housing and \$50.00. The tenant stated that the landlord failed to return the entire security and pet damage deposits. The tenant stated that the \$700.00 deduction for "Damage Repair/Replacement" for "3-107 Door" was not agreed to as shown by the notation next to the \$700.00 deduction. The tenant stated that the notation was written by the landlord's agent which states, "Lauren to Query with Nancy". The tenant argued that this notation is proof that she did not agree to the \$700.00 deduction.

The landlord disputes the tenant's claim arguing that the "Statement" was completed by the tenant on May 31, 2019 in which she agreed to the listed deductions of \$750.00. The landlord stated that it details the \$300.00 BC Housing payment, the \$50.00 painting deduction and a \$700.00 damage repair/replacement for "3-107 Door". The landlord stated that as the tenant had signed the statement agreeing to the deductions and had cashed the cheque for \$350.00, the landlord argues that the tenant had accepted the deductions on the "Statement". The landlord argued that the tenant was free to not sign and "agree" as stated on the statement but had. The landlord further stated at no time has the tenant contacted her about the \$700.00 deduction prior to filing the application.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

The tenant failed to provide sufficient evidence to satisfy me of her claim. Both parties confirmed that the tenancy ended on May 31, 2019 and that the tenant provided her forwarding address in writing on the condition inspection report for the move-out on May 31, 2019 as stated in the "Security/Pet Damage Deposit Statement". Both parties agreed that the landlord provided a cheque for \$350.00 for partial reimbursement for an overpayment of rent by BC Housing of \$300.00 for overpayment of rent and the difference in the deposits that were held against the deductions listed on the "Statement" of \$50.00. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Despite the tenant arguing that she did not consent to the \$700.00 deduction listed on the completed signed and dated "Statement", I find it unreasonable to infer that the notation, "Lauren to Query with Nancy" as a disagreement or refusal of the accepted listed deductions on the "Statement". I note that there are no further notations "disagreeing" to the deductions or above the statement in the move-out inspection.

Conclusion

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: October 19, 2020

Residential Tenancy Branch