



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: MNDL-S FFL MNSDS-DR FFT

Introduction

The landlord seeks compensation against their former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the “Act”). The tenant seeks the return and doubling of their security deposit from the landlord, and recovery of the application fee, pursuant to sections 38 and 72 of the Act.

Issues

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to the return, and doubling, of their security deposit?
3. Is either party entitled to recover the cost of their application fees?

Background and Evidence

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy began on June 1, 2021, and ended on July 31, 2022. Monthly rent was \$1,600 and the tenant paid a \$800 security deposit. The security deposit is currently held in trust by the landlord pending the outcome of these applications.

The landlord's application stated that the "Tenant killed 1 hedge tree. She cut branches along 6 trees in my hedge. One of the trees that she cut a major branch from has caused the whole tree to die."

He testified that he was initially excited to rent to this "cheerful lady," and comforted by the fact that she was a self-proclaimed gardener who would look after his property.

Unfortunately, after returning from a trip to Toronto, he discovered that the hedge tree and another tree had been killed by the tenant's cutting into them. He surmised that she had done so to construct some sort of shed. The landlord provided photographs of the vegetation after the purported destruction. He sought compensation in the amount of \$900 which he believes is the value of the two trees. An estimate from a third party was provided into evidence.

The tenant denied having destroyed the trees. She stressed that it was a particularly hot summer and that despite watering the trees on a twice-daily basis, they died, still.

Regarding the tenant's claim, she testified that she left a few copies of a document on which her forwarding address was included, at the end of the tenancy. The tenant provided a copy of the referred to document but did not include any photographs of the actual notes being left on various surfaces within the rental unit on or about July 31, 2022.

The landlord disputed that the tenant ever left a copy of her forwarding address anywhere in the rental unit. However, he went on to explain that he and the tenant met at a Tim Horton's a couple weeks after the tenancy ended to give her the proper form to fill out her forwarding address. The tenant did not cooperate with him or otherwise provide her forwarding address.

Analysis

Landlord's Claim for Compensation

The landlord testified that the tenant killed his trees. The tenant disputes this.

When two parties to a dispute provide equally plausible accounts of events or circumstances, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this dispute, there is no direct or indirect evidence that the tenant either deliberately or negligently killed the trees. There are no witnesses, the possibility that the trees died of drought or disease must be considered, and, the fact that there is no arborist report establishing the cause of death, leads me to find that the landlord has not proven the tenant's culpability in these matters. Therefore, I am unable to conclude that the tenant breached any section of the Act from which compensation may flow. Accordingly, the landlord's claim for compensation must be dismissed without leave to reapply. The landlord's claim to recover the cost of the application fee must therefore also be dismissed.

Tenant's Claim for Return and Doubling of Security Deposit

Section 38(1) of the Act states that

- (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.

In this dispute, there is no evidence to support the tenant's claim that she left multiple copies of her forwarding address laying about the rental unit at the end of the tenancy. Indeed, I find this version of events rather farfetched and difficult to accept. And I find it even more difficult to accept the tenant's version of the facts given her refusal to provide her forwarding address to the landlord when the parties later met at a Tim Hortons.

For these reasons, while the tenant is entitled to the full return of her security deposit (because of the landlord's unsuccessful claim compensation), the tenant is not entitled to any doubling under section 38(6) of the Act.

Having found that the tenant succeeded in the return of her security deposit, but unsuccessful in her claim for a doubled amount, the tenant is entitled to recover half the cost of her application fee. Pursuant to section 72(1) of the Act the tenant is entitled to an award of \$50.

The landlord is thus ordered to pay \$850 to the tenant forthwith, pursuant to sections 38 and 72 of the Act. A monetary order in this amount is issued with this decision to the tenant, and the tenant must serve a copy of the monetary order upon the landlord.

Conclusion

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

The tenant's application is hereby granted, in part. The landlord is hereby ordered to pay to the tenant the sum of \$850.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 27, 2023

Residential Tenancy Branch