

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order for the amount of the security deposit and compensation under section 38.

Despite having been served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The landlord did provide a letter to this hearing file stating she would be out of country on the day of the scheduled hearing.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me, under solemn affirmation by the tenant, are as follows.

The tenancy began on January 01, 2008 and ended on June 30, 2008. The landlord collected a security deposit of \$300 at the outset of the tenancy. A move in and a move out inspections were conducted by the tenants and landlord. According to the tenant the landlord noted some minor cleanliness issues during the move out inspection. There was no agreement between the parties as to any deductions from the deposit. On July 16, 2008, the tenant mailed the landlord their forwarding address in writing and request for the return of the "damage deposit and pet damage deposit".

However, the tenant's testimony is that on vacating the rental unit, the tenant and landlord agreed the pet damage deposit of \$150 was going to be retained by the landlord in consideration of some outstanding amount owed to the landlord by the tenant; thus, only the request of the damage deposit by the tenant on this application. There was no communication between the parties since sending the tenant's forwarding address and request for return of the deposits. To date, the tenants have not been returned the security deposit

Analysis

Section 38(1) of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of **\$300** and was obligated under section 38 to return this amount together with the **\$2.42** in interest which had accrued. The amount which is doubled is the \$300 base amount of the deposit before interest.

Conclusion

I find that the tenant has established a claim for **\$602.42**.

I grant the tenant an order under section 67 for the sum of **\$602.42**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 06, 2009