



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to return the security deposit and pet damage deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on August 17, 2009. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on August 22, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the tenants entitled to receive double the security deposit and pet damage deposit back?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on September 01, 2008 and ended on March 31, 2009. The monthly rent was \$1,400.00 which was due on the 1st of each month. The tenants paid a security deposit of



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\$700.00 and a pet damage deposit of \$700.00 on July 30, 2008. The tenant and landlord did a move in condition inspection at the beginning of the tenancy but the tenants testify that they did not receive a copy of this report. When the tenants moved out they arranged times to do the move out condition inspection with the landlords' daughter who was acting on the behalf of the landlord. The landlords' daughter kept cancelling the times arranged and eventually carried out an inspection in the absence of the tenants. The tenants did not receive a copy of this report.

The tenants testify that the landlords' daughter sent them a text message on April 03, 2009 stating that everything was fine in the unit and her mother would send them a cheque for their security and damage deposit within 15 days. The tenants gave the landlords' daughter their forwarding address verbally and by text message as they did not have an address for the landlord at this time.

The tenants state that when they entered into the tenancy agreement they had both this landlord and her partner as landlords. They believe the landlords separated and a new tenancy agreement was put in place on October 01, 2008 with just this landlords name on it. They never received a copy of this lease and did not have a contact address for the landlord. The tenants state that on May 01, 2009 they received a message from the landlord on their home phone stating that she could not return their deposits as she had to recover these from her ex-partner. Since that time the tenants have had no communication from the landlord and she has failed to return their deposits.

Analysis

The landlord did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I find that the landlord did not provide the tenants with a copy of the new tenancy agreement and therefore the tenants were unsure where to send their forwarding address in writing to the landlord. Therefore as the landlord has failed to provide the tenants with a copy of the new tenancy agreement pursuant to s. 13(3) of the *Act* I will accept that the tenants gave the landlord their forwarding address by

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written text and verbally to the landlords' agent (daughter). The *Residential Tenancy Act* s.38 states;

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.

(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.

I find in favour of the tenants claim for the return of double the security and pet damage deposit.

I find that the landlord received the tenants forwarding address on April 03, 2009 and has not returned the security deposit nor filed an application to retain the deposit. Therefore, as stated in s.38 of the Act the tenant is entitled to receive double the original amount back.

As the tenants have been successful with their application they are also entitled to recover the cost of filing this application. A monetary Order has been issued for the following amount:



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Double the security and pet damage deposit	\$2,800.00
Filing fee	\$50.00
Total amount due to the tenants	\$2,858.89

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,858.89**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

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 16, 2009.

Dispute Resolution Officer