

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This is an application by the Tenants for a monetary order for return of double the security and pet deposits paid to the Landlord and to recover the filing fee for the claim.

The Tenants served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on September 18, 2009, and deemed received five days later under the Act. Despite this the Landlord did not appear at the hearing. I find the Landlord has been served in accordance with the Act.

The Tenants gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants have also legally changed their names since the date they entered into the tenancy agreement with the Landlord.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Residential Tenancy Act by the Landlord?

Background and Evidence

The Tenants paid a security deposit of \$740.00 and a pet damage deposit of \$200.00 on March 4, 2007. The Tenants vacated the premises on August 30, 2009.

The Tenants provided the Landlord with a written notice of the forwarding address to return the security deposit to, by sending it by registered mail on July 29, 2009. The Tenants also personally served a copy of their forwarding address to the Agent for the Landlord on August 25, 2009. The Tenants did not sign over a portion of the security deposit. The Landlord has not returned the security deposit or pet damage deposit to the Tenants.

The Landlord did not perform incoming or outgoing condition inspection reports.

Analysis

Based on the foregoing, the affirmed and uncontradicted testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 38 of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit or pet deposit, plus interest.

The Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,955.98**, comprised of double the pet damage deposit and security deposit (2 x \$940.00) the interest on the original amounts held (\$25.98), and the \$50.00 fee for filing this Application.

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced 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: January 13, 2010.

Dispute Resolution Officer