

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for return of all or part of the security deposit or pet deposit and recovery of the filing fee paid for this application. The landlord did not appear at the hearing. The tenants testified that both landlords were served one hearing package by registered mail and provided a tracking number as evidence. The male landlord provided written submissions for the hearing.

The Act and Rules of Procedure require that applicants serve each respondent with the application and since the tenants sent only one hearing package only one landlord is considered serviced. Since the male landlord provided a written submissions, I am satisfied the male landlord has been served with notification of the tenants' application and I amend the application to name the male landlord only. Accordingly, the Monetary Order that accompanies this decision is against the male landlord only.

Issues(s) to be Decided

1. Have the tenants established an entitlement to return of all of their pet deposit?
2. Are the tenants entitled to double the pet deposit?

Background and Evidence

The tenants provided evidence as follows. The tenancy commenced June 2007 and ended September 30, 2009. The tenants paid a \$925.00 security deposit and a \$925.00 pet deposit on May 14, 2007. The tenant and the landlord, or the landlord's son, participated in move-in and move-out inspections together. The male tenant signed a document during the move-in inspection but it was not an official move-in inspection report. No move-out inspection report was prepared by the landlord or landlord's son. The tenants did not authorize the landlord to make any deductions from

the security deposit or pet deposit. The tenants provided their forwarding address in writing during the move-out inspection. On October 5, 2009 the tenants received a cheque from the landlord for the full amount of their security deposit and a cheque equivalent to the pet deposit less a deduction of \$189.50. On November 2, 2009 the tenants received another cheque representing interest on their deposits.

In the landlord's written submission the landlord provided a copy of an invoice for carpet cleaning for \$189.50 and indicated that carpet cleaning was necessary to remove pet stains and odour from the carpet. The landlord also stated that the landlord had requested the tenants arrange to have the carpets cleaned but that the tenants refused with the explanation they had just had the carpets cleaned a few months prior.

During the hearing, the tenants did not agree to authorize any deduction for carpet cleaning. The tenants also indicated they would not waive any entitlement to doubling of the pet deposit.

Analysis

The purpose of this hearing was to hear the tenants' application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the pet deposit. The landlord's entitlement to recover carpet cleaning costs was not an issue for me to decide for this proceeding as the landlord had not made an application for dispute resolution and the tenants did not agree to such a deduction. The landlord is at liberty to make a separate application for damages.

Section 38 of the Act provides for the return of security deposits and pet deposits. Section 38(1) requires the landlord to either return the security deposit, pet deposit and interest to the tenant, or make an application for dispute resolution claiming against the deposits, within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to comply with section 38(1) the landlord must pay the tenant double the security deposit

or pet deposit, as applicable, in accordance with section 38(6) of the Act. The amount to be doubled does not include interest.

I find that the tenancy ended and the tenants provided a forwarding address in writing on September 30, 2009 meaning the landlord had until October 15, 2009 to either repay all of the pet deposit and interest to the tenants or make an application for dispute resolution. In this case, the landlord returned \$735.50 of the \$925.00 pet deposit to the tenants within 15 days leaving a balance of \$189.50 that was unreturned and no application for dispute resolution was made to claim this amount by October 15, 2009.

In light of the above, the landlord did not have the legal right to retain \$189.50 of the tenants' pet deposit and the tenants have established an entitlement to return of double this amount. I order the landlord to pay the tenants double the unreturned portion of the pet deposit. As the interest has already been refunded by the landlord and the doubling provision of section 38(6) does not apply to interest, I do not double the interest returned after 15 days.

The tenants are awarded the filing fee paid for making this application. The tenants have been provided a Monetary Order in the amount of \$429.00 [(\$189.50 x 2) + \$50.00]. The tenants must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the amount of \$429.00 to serve upon the landlord.

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: March 17, 2010.

Dispute Resolution Officer