

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of his security deposit and pet deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail to the Owner. The Agent confirmed receipt of the hearing packages.

The Agent for the Landlord and the Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for the return of his pet and security deposits under sections 38, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on November 17, 2008 and ended on June 1, 2009. Rent was payable on the first of each month in the amount of \$600.00 and a security deposit of \$300.00 and a pet deposit of \$300.00 were paid on November 17, 2008 as supported by the Tenant's documentary evidence.

The Tenant testified and referred to his evidence of a letter signed by the property manager which confirms the Tenant left the rental unit "clean and undamaged and will be returned the full damage deposit of \$600.00." The Tenant argued that he has attempted numerous occasions to have his deposits returned and that he is always told that the cheque is in the mail.

The Tenant argued that his forwarding address was provided to the property manager, in writing on two separate occasions first on June 5, 2009 and again at the end of June 2009.

The Agent testified that they received a letter from the property manager advising them not to return the Tenant's security deposit because the rental unit had a horrible smell, the pet deposit was never paid, and the Tenant's father lived at the rental unit from the onset of the tenancy and was not listed on the tenancy agreement.

The Agent confirmed that neither the Landlord or his Agents have applied for dispute resolution to obtain an Order allowing them to retain the security and pet deposits; they do not possess an Order authorizing the Landlord to retain the security and pet deposits, and the Landlord does not have the Tenant's permission, in writing, to keep a portion of the security deposit.

The Tenant confirmed that he did not provide the Landlord or his Agents permission to keep the security and pet deposits.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

The evidence supports that neither the Landlord or his Agents have applied for dispute resolution to keep the security and pet deposits, do not have an Order allowing them to keep the pet and security deposits, and they do not have the Tenant's written consent to retain the security and pet deposits.

The evidence supports that the Tenant provided the Landlord's Agent with his forwarding address on June 5, 2009 and again at the end of June 2009.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security and pet deposits in full or file for dispute resolution no later than June 20, 2009.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against

the security and pet deposit and the landlord must pay the tenant double the security and pet deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of double the security deposit and pet deposit plus interest.

Monetary Order – I find that the Tenant is entitled to a monetary claim as follows:

Double Security Deposit 2 x \$300.00	\$600.00
Double Pet Deposit 2 x \$300.00	600.00
Interest owed on the Security Deposit of \$300.00 plus Pet Deposit of \$300.00 from November 17, 2008 to April 8, 2010	<u>1.11</u>
TOTAL AMOUNT DUE TO THE TENANT	\$1,201.11

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$1,201.11**. The order must be served on the respondent 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: April 08, 2010.

Dispute Resolution Officer