



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNSD      Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

FF      Recover the Filing Fee for this Application from the Respondent

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Although served by registered mail sent on April 21, 2010, the landlord did not appear. The tenant had submitted into evidence a copy of the registered mail slip for mail sent to the landlord's address and the envelope was returned. The tenant also submitted evidence that registered mail was then sent on May 7, 2010 addressed to the landlord at the landlord's business address as shown on her business card. I find that the tenant complied with the Act in properly serving the Notice of Hearing by registered mail.

### **Issue(s) to be Decided**

The tenant was seeking to receive a monetary order for the return of the security deposit paid at the start of the tenancy.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit and pet damage deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit at the end of the tenancy?
- Was an order issued permitting the landlord to retain the deposit?

The burden of proof is on the applicant to prove that the deposit was paid.

### **Background and Evidence**

The tenant testified that the tenant had entered into an agreement to rent the unit to start on January 11, 2010 that was to end on March 1, 2010. The tenant submitted a copy of the tenancy agreement which was documented on a standard residential tenancy form issued by the Ministry of Housing stating that the tenancy was for a fixed term under the *Residential Tenancy Act* and that rent was set at \$5,000.00 per month and all utilities included.

Section 4 of the tenancy agreement verified that a security deposit of \$1,000.00 and pet damage deposit of \$1,000.00 was paid. Section 4B of the tenancy agreement signed by both parties contained the following information printed below the amounts:

#### *1) The landlord agrees*

*a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property*

*b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation , and*

*c) to repay the security deposit and pet damaged deposit within 15 days of the end of the tenancy agreement, unless*

*i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or*

*ii) the landlord applies for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of security deposit or pet damage deposit.*

*2) The 15 day period starts on the later of*

*a) the date the tenancy ends, or*

*b) the date the landlord receives the tenant's forwarding address in writing.*

*3) If a landlord does not comply with subsection (1), the landlord*

*a) may not make a claim against the security deposit or pet damage deposit, and*

*b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.*

*4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.*

The tenant submitted into evidence proof of payment of the security and pet damage deposits comprised of copies of cheques given to the landlord.

The tenant testified that after the tenancy had ended, a written forwarding address was given to the landlord as required under the Act along with a request for the return of the security deposit in this communication. A copy of the letter with the written forwarding address dated March 14, 2010 was submitted into evidence. Proof of service of the letter by registered mail was also submitted into evidence by the tenant. The tenant stated that to date the landlord has not returned the security deposit and is now seeking double the deposit under section 38 of the Act.

## **Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this **Act**; (b) rights and obligations under the terms of a **tenancy agreement** that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

Based on the evidence, I find as a fact that both parties had from the outset intended to enter into a residential tenancy agreement governed by the Residential Tenancy Act and consented to be bound by both the terms of the tenancy agreement and the Act.

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is abundantly clear on this issue. I also find that the tenancy agreement specifically included within its terms the rights and responsibilities that were being agreed to by the parties in regards to the security and pet damage deposits.

Both the contract and the Act state that within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, I find that the landlord did not repay the deposit within the 15 days and did not make an application to retain it.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy. The tenant testified that this did not occur and I find as a fact that that the tenant did not give the landlord written permission to keep any part of the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the security deposit of \$1,000.00 and pet damage deposit of \$1,000.00 were both wrongfully withheld by the landlord in contravention of the Act totalling amount of \$2,000.00. I find that, under the Act, the tenant is entitled to be refunded double this amount, which is \$4,000.00. I find that the tenant is also entitled to be reimbursed the \$50.00 paid for this application. Accordingly, I find that the tenant is entitled to a total monetary order in the amount of \$4,050.00.

### **Conclusion**

I hereby issue a monetary order to the tenant in the amount of \$4,050.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

August 2010

Date of Decision

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Dispute Resolution Officer