

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for return of double her pet deposit plus payable interest and for the recovery of her filing fees for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the tenant served the landlord with notice of the application for dispute resolution by way of registered mail. I am satisfied that the application for dispute resolution was duly served to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to the return of double the amount of her pet deposit from the landlord? Is the tenant entitled to recovery of her filing fee for this application from the landlord?

Background and Evidence

The parties agreed that the tenant paid a security deposit of \$1,400.00 on March 18, 2006 and a pet deposit of \$1,400.00 on April 1, 2010. The tenant vacated the rental premises on April 29, 2010.

The tenant provided undisputed written evidence of her May 5, 2010 request to the landlord's agent for a return of her security and pet deposits to her forwarding address. The agent advised the tenant that the landlord was out of the country and that the agent was unclear as to whether a pet deposit had been paid. The tenant provided copies of

email messages to the agent in which she noted that the addendum to the signed Residential Tenancy Agreement required the tenant to pay the \$1,400.00 pet deposit to the landlord. The tenant also submitted a copy of that Agreement into evidence. The tenant sent another email request to the agent on May 11, 2010, repeating her request for return of the security and pet deposits. On May 14, 2010, the agent sent the tenant a \$1,447.79 cheque for the tenant's security deposit with interest.

Neither the landlord nor her agent returned the tenant's pet deposit plus interest until June 4, 2010. At that time, the tenant received a cheque from the landlord for \$1,227.29. The landlord's agent testified that the amount of the pet deposit was reduced to reflect the tenant's responsibility for expenses incurred by the landlord during this tenancy.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the security or pet deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

Although the landlord returned the security deposit plus interest to the tenant within the required 15-day period, neither she nor her agent returned the pet deposit within that time period. She did not return the tenant's pet deposit until June 4, 2010. Rather than returning the tenant's full pet deposit plus interest at that time, the landlord reduced the amount of her cheque to \$1,227.29, to reflect expenses that she maintained the tenant was responsible for during the tenancy. The landlord did not apply for an order under section 38(1) of the *Act* to make this deduction.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address on May 5, 2010, nor did she apply for dispute resolution within the time period required. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only. As set out below, I reduce the amount of that order by the \$1,227.29 paid by the landlord to the tenant on June 4, 2010.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

The total monetary award payable by the landlord to the tenant is as follows:

Item	Amount
Security Deposit paid on April 1, 2006 plus interest (\$1,400.00 + 47.79 = \$1447.79)	\$1,447.69
Double Security Deposit	1,400.00
Less Amount Paid on Security Deposit June 4, 2010	-1,227.29
Filing Fees	50.00
Total Monetary Award	\$1,670.40

Conclusion

I grant a monetary Order in favour of the tenant in the amount of \$1,670.40 for the return of twice the tenant's pet deposit and recovery of the tenant's filing fee.

The tenant is provided with an 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, this 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*.