

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for the return of double their security and pet deposits pursuant to sections 38, for loss under section 67, and for recovery of their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present evidence and to make submissions. The tenants testified that they sent the landlord their application for dispute resolution package by registered mail on June 2, 2010. They provided the Canada Post Tracking Number. Although the tenants maintained that the Canada Post records showed that the landlord received this package on June 3, 2010, the landlord testified that this package was not received until early August 2010, due to a mix-up with their postal box. However, the landlords testified that they did receive this package well in advance of this hearing. I am satisfied that the tenants served their application for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to receive a monetary order for double their security and pet deposits? Are the tenants entitled to recover their filing fee for this application?

Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2009. The tenants were paying \$1,300.00 in monthly rent plus \$65.00 per month for parking. The landlord testified that he received the tenants' pet damage deposit of \$650.00 and security deposit of \$650.00 before they moved into the rental premises. The tenants provided undisputed testimony that these payments were made on July 31, 2009.

The male tenant testified that early in April 2010, the tenants advised the landlord that they would be ending their tenancy at the end of April. He said that they vacated the rental premises on April 30, 2010. He testified that he sent the landlord a registered letter on May 11, 2010, asking the landlord to return their pet damage and security deposits to them at the forwarding address they provided. He testified that he had Canada Post confirmation that the registered letter was received on May 13, 2010.

The landlord testified that he sent the tenants a cheque for \$495.14 by regular mail on May 15, 2010 after he received the tenants May 11, 2010 letter on May 13, 2010. He referred to his written evidence, including the May 15, 2010 Statement of Damaged Deposit, sent to the tenants on that date. He testified that he reduced the pet deposit and security deposits by \$804.86 for cleaning and repair costs, a liquidated charge for early termination of their lease, and for unpaid rent. He said that he did not apply for dispute resolution to retain a portion of the pet damage and security deposits.

The male tenant said that the May 15, 2010 copy of the landlord's Statement of Damaged Deposit sent to them included a date stamp "Received May 28 2010." He said that they did not receive the landlord's cheque until early in June 2010. He also testified that the envelope containing the cheque included what appeared to be a date stamp of 100528, which he faxed following the hearing. The landlord did not have a copy of the envelope or the "date-stamped" Statement of Damaged Deposit.

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 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)).

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the alter of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- whether or not the landlord may have a valid monetary claim...*

Even if the landlord mailed the \$495.14 cheque to the tenants on May 28, this was still within the 15-day period permitted under section 38(1) of the *Act*. For this reason, I am satisfied that the landlord did return the \$495.14 portion of the deposits to the landlord within 15 days of receiving the tenants' forwarding address for doing so.

I find that the landlord had no legal basis for withholding the remaining \$804.86 of the pet damage and security deposit. The landlord did not file an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing, nor did he obtain the tenants' written permission to withhold these funds. As is noted above in Policy Guideline 17, the validity of any monetary claim that the landlord may have against the tenants has no bearing on the landlord's obligation to return the entire pet damage and security deposits to the tenants in accordance with section 38 of the *Act*. Under these circumstances, I find that the tenants are entitled to a monetary order amounting to double the pet damage and security deposits with interest calculated on

that portion of these deposits that were not returned to the tenants in May 2010. No interest is payable over this period. This monetary order is as follows:

Item	Amount
Pet Damage Deposit Paid July 31, 2009	\$650.00
Security Deposit Paid July 31, 2009	650.00
Less Pet Damage and Security Deposit Cheque Returned to Tenants May 2010	-495.14
Total Unpaid Pet Damage and Security Deposit Owing x Two (\$1,300 – \$495.14 = \$804.86 x 2 = \$1,609.72)	\$1,609.72

As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee for this application from the landlord. This results in an overall monetary award of \$1,659.72 in the tenants' favour. I also direct the tenants to cash the \$495.14 cheque sent to them by the landlord in May 2010.

Conclusion

I grant the tenants a monetary Order in the amount of \$1,659.72. This monetary Order includes recovery of the tenants' filing fee.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.