



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the tenants for the return of double their security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on May 06, 2010. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on May 11, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The female tenant appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the tenants entitled to double their security deposit?

Background and Evidence

The tenant testifies that the rental unit they were living in was too expensive and they decided to move out and rent this less expensive unit. They signed the tenancy agreement on November 05, 2009 and paid a months' rent of \$850.00, a security deposit of \$425.00 and a pet damage deposit of \$425.00. The next day their existing landlord reduced their rent so they were able to stay on at their existing rental unit. The tenant testifies that the day after they had signed the agreement she called the landlord to notify her that they would not be moving into the rental

Residential Tenancy Branch
Ministry of Housing and Social Development

unit. She claims at this conversation the landlord stated that she would return the rent paid of \$850.00 and their pet damage deposit of \$425.00. The landlord did not return these sums and the tenant contacted the landlord again and at this conversation the tenant states the landlord said she would keep the rent paid and return both the deposits. The tenant testifies that she sent the landlord their forwarding address in writing in a letter dated November 23, 2009. The tenant has provided a copy of this letter.

The tenant testifies that on January 11, 2010 she received a cheque from the landlord for her pet damage deposit only of \$425.00. The tenant seeks to recover double her security deposit as the landlord did not return this to her within 15 days of receipt of this letter. The tenant also seeks to recover her filing fee of \$50.00 for her application.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on November 28, 2009, the fifth day after it was mailed pursuant to section 90 (a) of the *Act*. As a result, the landlord had until December 13, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit or file an application to keep it. Therefore, I find that the tenants have established a claim for the return of double the security deposit of **\$900.00** pursuant to section 38(6)(b) of the *Act*.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the Act. I find the tenant is entitled to a Monetary Order as follows pursuant to section 38 of the *Act*:

Double the security deposit	\$900.00
Total amount due to the tenants	\$950.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$950.00**. The order must be served on the respondent 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: September 15, 2010.

Dispute Resolution Officer