



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

DISPUTE CODES MNSD

INTRODUCTION

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

I accept that the landlord was properly deemed served with the Application for Dispute Resolution hearing package by way of registered mail.

Both parties attended and were given full opportunity to be heard, to present evidence and to make submissions. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

BACKGROUND AND EVIDENCE

The tenant testified that she vacated the premises on August 7, 2010. The tenant testified that she provided his forwarding address to the landlord on that date but, to date his deposit has not been returned.

The landlord acknowledges receiving the tenant's forwarding address and agrees he has not returned the deposit because, he says, the tenant left without paying full rent.

FINDINGS

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 writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

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)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. Under the Act, the tenant would normally be entitled to a monetary order for double the deposit. However, in the Application for Dispute Resolution served on the landlord, the tenant has requested only the return of the deposit itself. I therefore find that the landlord has only had notice of a claim being made against him for \$500.00 not \$1,000.00. I will only award the sum of which the landlord has had notice.

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.