



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

Both, the tenant and the landlord were represented at today's hearing.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed and relevant facts before me are as follows.

This tenancy began in 2008 and was amended July 30, 2009 and ended on June 26, 2010. The landlord collected a security deposit of \$400 at the outset of the tenancy, and then a further \$200 pet damage deposit. There was no move in inspection identified. There was no move out inspection conducted at the end of the tenancy. The parties disagree on what efforts were made by each of them to initiate a move out inspection. The landlord claims to have left messages for the tenant in respect to an inspection. The landlord did not proceed to conduct an inspection without the tenant *and* to then forward a condition inspection report to the tenant. Regardless, the landlord testified that on July 06, 2010 she received, and was in possession of the tenant's forwarding address in writing.

The tenant further testified that on July 15, 2010 he received \$200 from his deposits of \$600, but that there was no explanation as to which deposit was being returned. The tenant also testified that he owed the landlord \$200 unpaid rent at the end of the

tenancy, and that the landlord was told to retain this amount from the security deposit, and he acknowledges permitting the landlord to retain this amount from his deposits. The landlord was sceptical about keeping a portion of the deposit for unpaid rent, but regardless retained \$400 of the deposit.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

In the absence of evidence to the contrary, I find that the landlord returned the tenant's *pet damage deposit* of \$200 back within 15 days of receiving the tenant's forwarding address.

Section 38(1) of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

On the face of the evidence in this matter, I give weight to the tenant's evidence that the landlord was permitted to retain \$200 of the deposits for a debt owed to the landlord – unpaid rent. Therefore, I find that the landlord currently holds a balance of the security deposit of \$200 – for which the parties did not agree as to its administration – and that the landlord was obligated under section 38 to return this amount together with the \$0.05 in interest which had accrued. Therefore, the amount which is doubled by section 38 of the Act is the \$200 in dispute before interest. As a result I find the tenant has established an entitlement claim for **\$\$400.05** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$455.05**.

Conclusion

I grant the tenant an order under section 67 for the sum of **\$455.05**. If necessary, this order may be filed in the Small Claims 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*.