



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants 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.

Both parties appeared at the hearing. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

BACKGROUND AND EVIDENCE

The tenant testified that they vacated the premises on March 31, 2010. The tenants testified that they provided their forwarding address on the move-out Inspection report completed on March 28, 2010. The tenant testified that he provided his forwarding address once again to the landlord via email but, to date the deposit has not been returned to him.

The landlord acknowledges receiving the tenant's forwarding address and agrees he has not returned the deposit because, she says, the tenants owe him in excess of \$700.00 for damages. The landlord says the tenants originally agreed to pay the costs of re-keying the lock until they realized it would cost in the neighbourhood of \$400.00. The landlord says it was necessary for the strata representatives to break the door to

the rental unit down because smoke was emanating from the rental unit as a result of the tenant having left the self-cleaning oven on.

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. In this case the landlord says he has the tenants' permission to keep the deposit however he has produced insufficient evidence to support this assertion and the tenants testified that they did not agree and have supplied evidence that they requested the return of their deposit more than once.

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. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

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

Total monetary award payable by the landlord to the tenant:

Security Deposit paid	387.50
Double Security Deposit	387.50
Filing Fees	50.00
TOTAL MONETARY AWARD	825.00

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.