



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 for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security and pet damage deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 13, 2010. The Tenants provided a copy of the registered mail receipt sent to the Landlord and I am satisfied that they were served in the time and manner in accordance with the *Act*.

Though duly served, the Landlord did not appear.

The Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy began on May 1, 2009 and ended on July 31, 2010. A security deposit of \$325.00 and a pet damage deposit of \$325.00 were paid in April 2009. The Tenants also paid \$30.00 for a key deposit.

The Tenants supplied evidence and gave affirmed testimony that the Landlord was provided the Tenants' written forwarding address, on August 25, 2010. I note the Landlord's Agent acknowledged receiving the Tenants' forwarding address with his confirmation on the written notice.

The Tenant AV stated that she remembered performing some type of a move in inspection, but not a move out inspection. The Tenants testified that they never received a copy of the move in or move out inspection or written report.

The Tenants testified that they placed numerous phone calls to the Landlord inquiring about the deposits, and afterwards as a result, received a cheque in the amount of \$387.00 with no explanation.

The Landlord has not filed for Dispute Resolution.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenants bear the burden of proof.

In this case the evidence and testimony supports that the Tenants provided the Landlord with their forwarding address on August 25, 2010, in person, to the Landlord's Agent.

The Landlord did not apply for dispute resolution to keep all or part of the security or pet damage deposit, does not have an Order allowing them to keep the security or pet damage deposit, and does not have the Tenants' written consent to retain the security or pet damage deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet damage deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenants' security and pet damage deposit in full or file for dispute resolution no later than September 10, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet damage deposit and the landlord must pay the tenant double the security and pet damage deposit. In the absence of proof from the Landlord, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of their security and pet damage deposit.

I find that the Tenants have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$325.00	\$650.00
Key Deposit	30.00

Filing Fee	<u>50.00</u>
Sub-total owed by the Landlord	<u>\$1,380.00</u>
Less amount paid by the Landlord	<u>(\$387.00)</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$993.00

Pursuant to the policy guideline, I have provided the Tenants with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are granted a monetary order for \$993.00.

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: December 13, 2010.

Dispute Resolution Officer