



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to hear the tenant's application for return of double the unreturned portion of the security deposit and pet deposit. The landlord did not appear at the hearing. The tenant provided a registered mail tracking number as evidence the landlord was served with notification of this hearing. A search of the tracking number showed that the landlord did receive the registered mail on August 4, 2010. Having been satisfied the landlord was notified of this hearing in accordance with the requirements of the Act, I proceeded to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of double the unreturned portion of her security and/or pet deposit?

Background and Evidence

The tenant provided the following testimony. The tenancy commenced October 1, 2009 and ended at the end of June 2010. The tenant paid a security deposit and pet deposit of \$1,150.00. The tenant was not provided with a move-in inspection report. The tenant participated in a move-out inspection where the landlord took photographs but did not prepare a move-out inspection report. On July 14, 2010 the parties met and the landlord returned a portion of the deposits to the tenant. The landlord gave the tenant a list of repairs and withheld \$650.75 from the deposits without the tenant's authorization. The tenant objected to the landlord withholding \$650.75 from the deposits and the tenant provided her forwarding address to the landlord during that meeting on July 14, 2010. The landlord has not returned to the tenant any portion of the \$650.75 withheld on July 14, 2010.

In making this application the tenant is seeking to recover double the \$650.75 withheld by the landlord without authorization and recovery of the filing fee paid for this application.

Analysis

Section 38 of the Act provides for the return of security deposits and pet deposits. The Act permits a landlord to obtain the tenant's written consent for deductions. However, a



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landlord cannot obtain a tenant's consent for deductions for damages if the landlord has not met the move-in or move-out inspection report requirements.

In the absence of any evidence to the contrary I accept the tenant's version of events. Accordingly, I find the landlord did not have the legal right to withhold or make deductions from the deposits as the landlord did not have the tenant's written consent for deductions and because the landlord had not met the move-in and move-out inspection report requirements.

Section 38(1) requires the landlord to either return the deposit(s) to the tenant or make an application for dispute resolution claiming against the deposit(s) within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Should a landlord fail to comply with the requirements of section 38(1) the landlord must pay the tenant double the deposit(s) pursuant to section 38(6) of the Act.

I accept that the tenancy ended at the end of June 2010 and the tenant provided her forwarding address to the landlord on July 14, 2010. Accordingly, the landlord had until July 29, 2010 to either repay the deposits to the tenant or make an application for dispute resolution. Since the landlord did neither of these two options the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenant double the unreturned portion of the deposits. The tenant's application is granted and I provide the tenant with a Monetary Order as follows:

Unreturned portion of deposits x 2 (\$650.75 x 2)	\$ 1,301.50
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 1,351.50

The tenant must serve the Monetary Order upon the landlord and may enforce it in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenant's application has been granted and the tenant is provided a Monetary Order in the amount of \$1,351.50 to serve upon the landlord.

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 29, 2010.

Residential Tenancy Branch