

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although we waited until 9:44 in order to enable the landlord to connect with this hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that her witness handed the landlord a copy of the tenant's dispute resolution hearing package on October 23, 2010. The tenant's witness gave sworn testimony to confirm that he handed the landlord this package on October 23, 2010 at approximately 5:30 p.m. The tenant also said that she spoke with the landlord in January 2011 to attempt to resolve this dispute and the landlord was aware that the tenant had obtained a hearing date for this application for dispute resolution. I am satisfied that the tenant served her dispute resolution hearing package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to obtain a return of all or a portion of her security deposit from the landlord? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

This month-to-month tenancy began on August 1, 2007. Monthly rent was set at \$910.00, payable on the first of each month. The tenant paid a \$462.50 security deposit on July 24, 2007. The tenant paid a \$400.00 pet damage deposit on August 1, 2007. The tenant testified that the landlord returned \$300.00 of her pet damage deposit to the tenant on November 1, 2007.

The tenant entered into written evidence a copy of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property handed to her on March 9, 2010. This Notice required the tenant to vacate the rental unit by May 31, 2010. The tenant

testified that she and the landlord agreed to extend the date of the tenant's occupancy of the rental unit until June 15, 2010, the date when she vacated the rental unit. The tenant said that she paid the landlord one-half month's rent for June 2010.

The tenant submitted into written evidence a copy of her June 15, 2010 letter to the landlord advising her of the forwarding address where the landlord could send her security and pet damage deposits. The landlord continues to hold the tenant's security deposit and \$100.00 from the tenant's pet damage deposit.

The tenant provided a copy of her October 8, 2010 letter to the landlord in which she requested the return of her \$462.50 security deposit, the unreturned \$100.00 portion of her pet damage deposit, and a \$910.00 refund of her last month's rent in accordance with sections 49 and 51(1) of the *Act*. As the landlord did not forward these funds to the tenant, the tenant applied for a monetary Order for \$1,484.53, plus the recovery of her \$50.00 filing fee for this application.

Analysis – Security and Pet Damage Deposits

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, to either return the security and pet damage deposits or file an Application for Dispute Resolution for an Order to make a claim to retain these deposits. The landlord did not apply for dispute resolution to authorize her retention of a portion of the tenants' deposits. If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposits, and the landlord **must** pay the tenant double the amount of the deposits (section 38(6)).

Subsection 36(2)(c) of the *Act* reads in part as follows:

36 (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit...for damage to residential property is extinguished if the landlord...*

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

I find that the landlord had no legal basis for withholding the tenant's \$462.50 security deposit or the \$100.00 portion of the tenant's pet damage deposit. The landlord did not file an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing, nor did she obtain the tenant's written permission to withhold these funds. As noted in Policy Guideline 17, the validity of any monetary claim that the landlord may have against the tenant has no bearing on the landlord's obligation to return the entire security and pet damage deposit to the tenant in accordance with section 38 of the *Act*.

Under these circumstances, I find that the tenant is entitled to a monetary Order amounting to double the \$462.50 security deposit and the \$100.00 retained portion of the pet deposit plus interest on the original deposits only.

Analysis – Return of One Month's Rent Pursuant to Section 51(1) of the *Act*

Section 51(1) of the *Act* reads as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

Based on the undisputed testimony of the tenant, the landlord did not provide the tenant with the equivalent of one month's rent. I find the tenant is entitled to a monetary award in the amount of \$910.00

As the tenant has been successful in her application, I allow her to recover her \$50.00 filing fee for this application from the landlord.

Conclusion

I grant the tenant a monetary Order in the following terms which allows the tenant to obtain double her security deposit and that portion of her pet damage deposit not returned to her by the landlord. Interest is payable on the original amounts of these deposits only.

Item	Amount
Tenants' Security Deposit Plus Interest from July 24, 2007 (\$462.50 + \$10.05 = \$472.55)	\$472.55
Double Amount of Tenant's Security Deposit	462.50
Unreturned Portion of Tenant's Pet Damage Deposit Plus Interest from August 1, 2007 (\$100.00 + \$2.14 = \$102.14)	102.14
Double Amount of Unreturned Portion of Tenant's Pet Damage Deposit	100.00
One Month's Rent (s. 51(1) of the <i>Act</i>)	910.00
Filing Fee	50.00
Total Monetary Order	\$2,097.19

This Order also allows the tenant to obtain a monetary award equivalent to one month's rent and to recover her filing fee for her application.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.