



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 the security deposit and to recover the filing fee.

The tenants served the landlord by registered mail on October 27, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to receive double the security deposit?

Background and Evidence

Both parties agree that this tenancy started on May 01, 2006 and the tenants transferred to the new unit on May 31, 2008. This was a fixed term tenancy for one year which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$760.00 per month and was due on the first of each month. The tenants paid a security deposit of \$310.00 on April 18, 2006 and a pet deposit of \$380.00 on May 31, 2008. The tenants moved from the rental unit on April 30, 2010.

The tenants testify that they gave the landlord their forwarding address in writing on April 30, 2010 on the move out condition inspection form and have provided a copy of this in evidence. The tenants state they did not receive the security deposit from the landlord within 15 days but agree the landlord did file an application to keep the deposit within 15 days. The tenants state that they attended the landlords hearing held in September, 2010 but the landlord failed to appear and his application was dismissed without leave to reapply. The tenants testify that they did not authorise the landlords to make any deductions from their deposits.

The tenants seek to recover double their security deposit of \$310.00 and pet deposit of \$380.00 plus any interest as these were not returned to them within 15 days of the landlords receiving their forwarding address in writing. The tenants also seek to recover their filing fee of \$50.00 paid for this application.

The landlords agree that an application was filed but due to an error on their part no one attended that hearing and their application was dismissed without leave to reapply.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on April 30, 2010. As a result, the landlord had until May 15, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and although they did file an application to keep the deposits they failed to attend the hearing. Therefore, I find that the tenants have established a claim for the return of double the security deposit and pet deposit of **\$1,380.00** plus accrued interest of **\$13.85** pursuant to section 38(6)(b) of the *Act*.

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenants are entitled to a Monetary Order as follows:

| | |
|--|-------------------|
| Double the security and pet deposits | \$1,380.00 |
| Filing fee | \$50.00 |
| Total amount due to the tenants | \$1,443.35 |

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,443.35**. The order must be served on the respondents and is enforceable through the Provincial Court 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*.

Dated: March 08, 2011.

Residential Tenancy Branch