



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for return of the security and pet deposit - Section 38;
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under a two year lease agreement began on September 1, 2010 and ended on January 28, 2011. Rent in the amount of \$1,500.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit in the amount of \$500.00 and a pet deposit in the amount of \$250.00 from the Tenants. The Tenant states at move-out she provided the forwarding address to the Landlord and did a walk-through with the Landlord who stated at the time that everything was fine although no condition report was completed or forwarded to her. The Tenant states that the Landlord has refused to return the security and pet deposit due to the Tenants ending the two year lease agreement early.

The Landlord agrees that they kept the security and pet deposits for the Tenant breaking the lease but states that the Tenant agreed to this orally. The Landlord disputes that the unit was clean and undamaged at move-out but confirms that no application for dispute resolution was made to retain the deposits or to make a claim for damages. The Tenant disputes that she agreed to the Landlord's retention of the deposits and states that new tenants moved into the unit immediately following the end of their tenancy. The Landlord confirmed that new tenants moved in immediately following the end of the tenancy on January 28, 2011. The Tenant stated at the hearing that she was not waiving the return of double the security deposit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. I accept the evidence of the Tenant that no agreement was made to allow the Landlord to retain the deposits. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Tenants are entitled to return of double the security deposit in the amount of \$1,000.00 and return of the pet deposit in the amount of \$250.00. The Tenants are also entitled to return of the filing fee for a total entitlement of \$1,300.00.

Calculation for Monetary Order

Security deposit (500 x 2)	\$1,000.00
Pet deposit	250.00
Return of Filing fee	50.00
Total Monetary Award	\$1,300.00

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,300.00**.

If necessary, this order may be filed in the Small Claims Court and enforced 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: June 08, 2011.

Residential Tenancy Branch