



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

DISPUTE CODES MNSD, FF

INTRODUCTION

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

I accept that the landlord was properly deemed served with the Application for Dispute Resolution hearing package by way of registered mail.

The tenant was given a full opportunity to be heard, to present evidence and to make submissions. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

BACKGROUND AND EVIDENCE

The tenant testified that he paid a security deposit of \$300.00 at the start of this tenancy in August of 2010. When the tenancy ended the tenant wrote to the landlord in a letter dated May 1, 2011 to provide her with his forwarding address in writing. The tenant testified that, to date, his security deposit has not been returned to him.

Once the hearing had been concluded, the tenant disconnected from the conference call hearing. While the Dispute Resolution Officer was in the process of disconnecting the landlord appeared at the hearing. The landlord was advised that the hearing had been concluded no testimony was received from the landlord and there is no documentary evidence in the file from the landlord.

FINDINGS

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 in writing, to either (1) return the deposit or, if the landlord believes he/she has cause to retain the deposit or any portion thereof, to (2) file an Application for Dispute Resolution seeking an Order seeking to retain the deposit. A landlord is not allowed, under the Act to retain

the deposit without the tenant's permission or without an Order from the Residential Tenancy Branch allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

As set out above, the landlord appeared at the hearing after the hearing had been concluded. Further, there is no documentary evidence from the landlord to show that she had already returned the deposit or that she has filed an application seeking to retain the deposit. I therefore find that the landlord has not complied with Section 38 of the *Residential Tenancy Act* and the tenant is therefore entitled to a monetary order in amounting to double the deposit with interest (if any) calculated on the original amount only.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on August 2010	\$300.00
Double Security Deposit	300.00
Interest on original amount paid from date security deposit paid to date of this order (no interest accrued)	0.00
Filing Fees	50.00
TOTAL MONETARY AWARD	\$650.00

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