



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.

Both parties attended and were 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 she vacated the premises on June 30, 2011 at which time a Condition Inspection Report was prepared and the tenant provided her forwarding address. The tenant says that the condition Inspection Report she signed stated that her entire deposit plus interest would be returned to her. However this was not the case. The tenant says the landlord deducted \$25.00 from the deposit in a cheque sent on July 13, 2011. The landlord later cancelled the cheque which was short by \$25.00 and issued a new cheque however by this time the 15 day time limit had passed.

the landlord acknowledges receiving the tenant's forwarding address on the condition Inspection Report signed June 30, 2011 and the entire deposit was to have been returned to the tenant. However, after the parties signed the report the resident manager noted that the shelf liner paper had not been removed pursuant to the move-out cleaning instructions and the resident manager added this deduction to the already executed Condition Inspection Report. The resident manager states that she thought it was okay to alter a condition inspection report after it had been signed. The resident

manager then thought it was too much trouble to attend arbitration to claim the \$25.00 and decided it should be returned to the tenant and a new cheque was issued dated July 21, 2011 however, at this point it was past the 15 day time limit.

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 writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

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)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord did not return the entire security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

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

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on February 1, 2008	\$455.00
Interest on original amount paid from date security deposit paid to date of this order	6.25
Less amount received by tenant	-461.25
Filing Fees	50.00
TOTAL MONETARY AWARD IN FAVOUR OF TENANT	\$505.00

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*.

Dated: October 31, 2011.

Residential Tenancy Branch