



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 by way of conference call in response to an application by the tenants for a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of this application.

One of the tenants attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. Despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on September 27, 2011, the landlord did not attend. The tenant provided affirmed testimony that the documents were sent on September 27, 2011 and provided a registration number from Canada Post confirming that testimony, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided by the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the pet damage deposit or security deposit, or double the amount of the pet damage deposit or security deposit pursuant to Section 38 of the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this fixed-term tenancy began on April 1, 2010 and expired on March 31, 2011. Rent in the amount of \$3,400.00 per month was payable in advance on the 1st day of each month. On February 22, 2010 the landlord collected a security deposit from the tenants in the amount of \$3,400.00, and no pet damage deposit was collected. The tenant also provided a copy of the tenancy agreement, which does not contain a date for the tenancy to begin, however it does state that the fixed term is for one year expiring on March 31, 2011. The agreement also specifies that there is no pet damage deposit, and the security deposit amount is \$3,400.00. The agreement does

not specify whether or not the tenancy continues on a month-to-month basis at the end of the fixed term or if the tenants are required to move out of the rental unit at the end of the fixed term.

The tenant also testified that the tenants had emailed the landlord asking if they could stay in the rental unit until the end of June, 2011, and then changed their minds and told the landlord they would vacate on April 15, 2011, which they did. The landlord responded by email saying that April 15, 2011 was perfect, but the landlord had a property manager looking after the rental unit and it was up to the property manager. The landlord promised to get back to the tenants, but never did. However the landlord had sold the rental unit through the property management real estate company. The tenants did not pay any rent for the month of April, 2011.

The tenants also provided copies of emails exchanged between the parties as well as copies of receipts for rent and the security deposit. In an email dated September 22, 2011 the tenants provided a forwarding address in writing. The landlord responded to that email on September 29, 2011 stating that the lease was extended to June 30, 2011, and the security deposit was being held for unpaid rent for the month of April, 2011. The tenant disagrees that the lease was extended beyond March 31, 2011.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit and pet damage deposit in full or apply for dispute resolution claiming against the deposit(s) within 15 days of the later of the date the tenancy ends or the date the tenants provide a forwarding address in writing. If the landlord fails to do either, the landlord must be ordered to pay the tenants double the amount of the security deposit or pet damage deposit paid by the tenants. In this case, I find that the tenancy ended on April 15, 2011 and the tenants provided a forwarding address by email on September 22, 2011, which was acknowledged by the landlord on September 29, 2011. The landlord has not returned any portion of the security deposit to the tenants and has not applied for dispute resolution claiming against the security deposit, and therefore, I must order the landlord to pay double that amount to the tenants.

I further find that the landlord has collected more money for a security deposit than permitted under the *Residential Tenancy Act*. The *Act* specifies that a landlord may not collect more than one half of a months' rent for a security deposit, and half of a months' rent for a pet damage deposit, if one is required at all. A landlord may only claim against a pet damage deposit for damage caused by a pet. In this case, the landlord collected a full months' rent for a security deposit and no pet damage deposit. Further,

it appears the landlord has kept the security deposit for unpaid rent, but the landlord has not made an application for dispute resolution claiming unpaid rent or claiming against the security deposit for unpaid rent.

The tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$6,850.00. This order is final and binding on the parties and may be enforced.

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: December 13, 2011.

Residential Tenancy Branch