



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

DISPUTE CODES MNSD

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 and/or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

Both parties appeared at the hearing and gave evidence under oath.

ISSUE

Are the tenants entitled to the Orders sought?

BACKGROUND AND EVIDENCE

The tenant testified that she vacated the premises supplied a forwarding address to the landlord. The landlord confirmed that he received the forwarding address on October 5, 2011.

The landlord agrees that the deposit has not been returned to the tenants. The landlord produced a letter from himself to the tenants stating:

I am informing you, as discussed, I will be retaining the security deposit for the suite you had rented because of the lease we had, starting July 1, 2011 for 1 year, on September 6, 2011, I was informed by you, that you will be breaking het lease and leaving November 1, 2011.

Regards
[the landlord]

(reproduced as written)

At the bottom of the letter is a note "Received by" and a signature. The landlord says this is one of the tenant's signatures and this letter constitutes the agreement for him to retain the deposit.

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 to make such a claim.

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. The letter produced by the landlord is not an agreement between the parties which allows the landlord to retain the deposit. It is simply a letter from the landlord in which he tells them what he intends to do with respect to the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. Under the Act, the tenant would normally be entitled to a monetary order for double the total amount of the deposits. However, in the Application for Dispute Resolution served on the landlord, the tenant has requested only the return of the deposits. The landlord has only had notice of a claim being made against him/her in the sum of \$750.00 not \$1,500.00 which is the total of the two deposits. As a party has the right to know the full claim being made against them I will therefore only award the sum of which the landlord has had notice.

As the tenants have been successful with this application I will also award recovery of the filing fee as claimed in the sum of \$50.00 for a total of \$800.00.

The tenants are 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: January 19, 2012.

Residential Tenancy Branch