



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 9:45 a.m. in order to enable her to connect with this hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent the landlord a copy of his dispute resolution hearing package by registered mail, including the Notice of a Dispute Resolution Hearing, on or about February 4, 2012. He noted that the landlord must have received this hearing package as she included a copy of the Notice of a Dispute Resolution Hearing in her written evidence package sent to him and the Residential Tenancy Branch (the RTB). Based on the RTB's receipt of a written evidence package for this hearing (including a copy of the Notice of a Dispute Resolution Hearing) from the landlord on February 8, 2012, I find that the landlord was properly served with the tenant's application for dispute resolution, including the time and date of this hearing, in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits (the deposits)? Is the tenant entitled to a monetary award equivalent to the amount of his deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this periodic tenancy commenced on or about July 15, 2009. Monthly rent by the end of this tenancy was set at \$617.00, payable in advance on the first of each month. The tenant paid a \$300.00 security deposit and a \$300.00 pet damage deposit on July 15, 2009.

The tenant testified that he handed the landlord a written copy of his forwarding address on December 30, 2011. He said that he vacated the rental premises on December 31, 2011 and left the keys for the landlord on the kitchen counter of the rental unit.

The tenant testified that the landlord returned \$180.00 of his security deposit by way of a January 18, 2012 cheque. He said that he received this cheque on January 20, 2012. The tenant testified that the landlord retained \$120.00 from his security deposit. The landlord's written evidence confirmed that she withheld this amount from his security deposit, submitting photos and receipts to demonstrate her assertion that the tenant left material behind after he vacated the rental unit that she had to remove from the property. The tenant also testified that the landlord returned \$260.00 from his pet damage deposit by way of a January 25, 2012 cheque that he received on January 29, 2012. The landlord provided written evidence that did not dispute the tenant's claim that she had withheld a portion of the tenant's pet damage deposit.

The tenant's application for a monetary award of \$760.00 (plus the recovery of his \$50.00 filing fee) included the return of the remaining portions of his deposits (\$160.00 in total) and a monetary award of \$600.00 for the landlord's failure to return all of his deposits within 15 days of the end of his tenancy.

Analysis

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 return the deposits or file an Application for Dispute Resolution seeking an Order 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 deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from the deposits if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, the evidence is that the tenant provided a forwarding address in writing to the landlord on December 30, 2011. The tenant vacated the rental premises by December 31, 2011. Therefore the landlord's obligations with respect to returning the deposits commenced on December 31, 2011.

There is undisputed evidence that the landlord returned a portion of the tenant's security deposit on January 23, 2012, retaining \$120.00 from that deposit. There is also undisputed evidence that the landlord returned a portion of the tenant's pet damage deposit on January 25, 2012, retaining \$40.00 from that deposit. I find that the landlord has not returned the deposits in full within 15 days of the end of the tenancy. I find that the landlord did not apply for dispute resolution to retain these deposits, nor did the landlord have the tenant's written authorization to retain any portion of these deposits.

I find that the tenant is entitled to a return of the \$120.00 portion of his security deposit withheld by the landlord and the \$40.00 portion of his pet damage deposit withheld by the landlord. I make this award because I find that the landlord had no legal authorization to withhold either of these amounts from the tenant's deposits. No interest is applicable on either of these monetary awards.

As I find that the landlord has failed to comply with the provisions of section 38 of the *Act*, I issue a further monetary award in the tenant's favour in the amount of \$600.00. No interest is applicable to this portion of the tenant's monetary award. Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to obtain monetary awards for the return of the retained portions of his deposits, for the landlord's failure to comply with the provisions of section 38 of the *Act*, and for the recovery of his filing fee:

Item	Amount
Unreturned Portion of Tenant's Security Deposit	\$120.00
Unreturned Portion of Tenant's Pet Damage Deposit	40.00
Monetary Award for Landlord's Failure to Comply with Provisions of Section 38 of the <i>Act</i>	600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$810.00

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 04, 2012

Residential Tenancy Branch