



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 repose to the tenant's application to recover the security and pet deposits and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to the return of the security and pet deposits?

Background and Evidence

Both parties agree that this tenancy started on August 01, 2011 and ended on February 29, 2012. Rent for this unit was \$1,400.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$700.00 and a pet damage deposit of \$350.00 on August 01, 2011. A move in and a move out condition inspection was completed with both parties and the tenant gave the landlord her forwarding address in writing on March 01, 2012.

The tenant seeks to recover her security deposit and her pet deposit as the landlord has not returned these to the tenant within 15 days. The tenant states she waives her right to have these deposits doubled. The tenant testifies that she has not agreed that the landlord can keep any of her deposits.

The landlord testifies that she has filed an application for money owed or compensation for damage or loss under the Act, Regulations or tenancy agreement and a hearing is scheduled for May, 2012. The landlord agrees she has not filed an application to keep all or part of the tenant's security and pet deposit within 15 days of receiving the tenants forwarding address in writing.

Analysis

I have carefully considered the evidence before me, including the sworn testimony of both parties. I refer the parties to Section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit and pet deposit to the tenant.

However a tenant may waive their right to receive double the security deposit at the hearing. In this case the tenant has specifically waived the doubling of the deposit; therefore based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on March 01, 2012. As a result, the landlord had until March 16, 2012 to return the tenants security and pet deposit. I find the landlord did not return the security deposit or pet deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit and pet deposit pursuant to section 38(6)(b) of the *Act*. As the tenant has waived her right to

double the deposits the tenant will receive a Monetary Order for the amounts paid to the sum of **\$1,050.00**.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

security and pet deposits	\$1,050.00
Filing fee	\$50.00
Total amount due to the tenants	\$1,100.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 13, 2012.

Residential Tenancy Branch