



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 made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch and to the landlord. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on March 2, 2012, the landlord did not attend. The tenant provided evidence of having mailed the documents by registered mail on that date and testified that a check on the Canada Post website reveals that the landlord received the package on March 5, 2012. The line remained open while the phone system was monitored for 10 minutes and the only participant who attended the call was the tenant. 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

Is the tenant entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 1, 2010 and ended on April 30, 2011. Rent in the amount of \$550.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit in the amount of \$275.00 as well as a pet damage deposit in the amount of \$50.00 from the tenant.

The tenant further testified that the landlord was given written notice to vacate the rental unit around April 15, 2011 and paid rent up to mid-May, 2011.

On February 1, 2012 the tenant sent a letter by registered mail to the landlord requesting return of the pet damage deposit and security deposit and provided a forwarding address in that letter. A check on the Canada Post website reveals that the landlord received the letter on February 3, 2012.

The landlord sent the tenant a cheque in the amount of \$200.00 but subsequently phoned the tenant at work and emailed the tenant stating that the landlord had issued the cheque in error and the landlord would be putting a stop payment on the cheque. The tenant received the email prior to depositing the cheque, so the tenant threw the cheque away. The tenant has not received any amount from the landlord since.

Analysis

The *Residential Tenancy Act* is clear with respect to deposits held by a landlord:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The *Act* gives no discretion with respect to the amount the landlord must pay the tenant; the *Act* specifically states, "...must pay the tenant double..." I am satisfied in the evidence before me that the landlord received the tenant's forwarding address in writing on February 3, 2012 and the landlord has not complied with Section 38, therefore, I must order that the landlord pay the tenant double the amount of the security deposit and double the amount of the pet damage deposit, for a total of \$650.00.

Since the tenant has been successful with the application, the tenant is 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 tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$700.00.

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: May 02, 2012.

Residential Tenancy Branch