



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of her pet damage and security deposits pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that the tenant handed him a copy of her dispute resolution hearing package on July 4, 2012. I am satisfied that the tenant served this package and her four pages of written evidence in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her pet damage and security deposits? Is the tenant entitled to a monetary award equivalent to the amount of her pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The landlord testified that this one-year fixed term tenancy commencing on December 1, 2011 was scheduled to end on December 1, 2012. Monthly rent was set at \$950.00, payable in advance on the first. The landlord continues to hold the tenant's \$475.00 security deposit paid on November 28, 2011. The landlord continues to hold the tenant's \$125.00 pet damage deposit paid on January 1, 2011. The tenant agreed with the above information with the exception that she disputed the landlord's claim that she had a fixed term tenancy.

The parties confirmed that the tenant vacated the rental unit by May 31, 2012. The landlord said that he did not receive the tenant's key until June 1, 2012. The landlord gave sworn testimony that he received the tenant's May 31, 2012 letter, a copy of which was entered into written evidence by the tenant, on June 1, 2012. In that letter, the tenant provided her forwarding address where she requested the landlord return her pet damage and security deposits. The landlord confirmed the tenant's claim that he did not return any portion of either of these deposits and did not file for dispute resolution to

seek authorization to retain these deposits. He testified that he has no written agreement with the tenant to retain either of these deposits.

At the hearing, the landlord testified that the tenant contravened the *Act* by ending her tenancy early and failing to provide him with adequate notice to enable him to re-rent the premises until June 15, 2012. He said that he was able to locate another tenant who is currently paying \$975.00 per month. He confirmed that he has not made any application for dispute resolution regarding this 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 pet damage and security deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain these deposits. 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 a security or pet damage deposit 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, I find that the landlord has not returned the pet damage or security deposits within 15 days of receipt of the tenant's forwarding address in writing. The landlord has not applied for dispute resolution and does not have the tenant's written permission to retain these deposits. I find that the tenant is entitled to a monetary order amounting to double the pet damage and security deposits with interest calculated on the original amount only. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to receive an amount equivalent to double the value of her pet damage and security deposits as a result of the landlord's failure to comply with the requirements of section 38 of the *Act*.

Item	Amount
Return of Original Pet Damage and Security Deposits (\$125.00 + \$475.00 = \$600.00)	\$600.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	600.00
Total Monetary Order	\$1,200.00

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: September 07, 2012

Residential Tenancy Branch