



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

- authorization to obtain a return of double their pet damage and security deposits pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

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 male tenant (the tenant) gave undisputed sworn testimony that he sent the landlords a copy of the tenants' dispute resolution hearing package by registered mail on July 24, 2012. He gave undisputed testimony that the female landlord (the landlord) signed for receipt of this registered mailing on July 25, 2012. I am satisfied that the tenants served this package in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of their pet damage and security deposits? Are the tenants entitled to a monetary award equivalent to the amount of their pet damage and security deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover their filing fee for this application from the landlords?

Background and Evidence

This tenancy commenced as a six-month fixed term tenancy on November 1, 2011. At the expiration of the initial term, the tenancy continued as a periodic tenancy until June 30, 2012, by which time the tenants had vacated the rental unit. Monthly rent was set at \$2,800.00, payable in advance on the first of each month, plus utilities. The tenants paid a \$250.00 pet damage deposit and a \$1,425.00 security deposit on September 19, 2011. The landlord returned a July 15, 2012 cheque for \$641.00 of these deposits. The tenant cashed this cheque on July 24, 2012, after filing the application for dispute resolution. The landlords continue to hold the remaining \$1,034.00 of the tenants' pet

damage and security deposits (the deposits), which they have retained to compensate them for damage and losses that they maintain arose during 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 deposit 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 deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, 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, the tenant provided undisputed sworn testimony that he provided the landlords with the tenants' forwarding address on or about June 24, 2012. The landlord confirmed that she had the tenants' forwarding address and returned a portion of their deposits to them on July 15, 2012. The landlords' obligation to return these deposits in full began on June 30, 2012.

I find that the landlords have not returned the deposits in full within 15 days of the end of this tenancy. The landlords did not apply for dispute resolution within 15 days of the end of this tenancy and did not obtain the tenants' written agreement to retain any portion of the deposits. Although the landlord provided oral and written evidence maintaining that the landlords were entitled to a monetary award for damage arising out of this tenancy, the landlords have not applied for any such monetary award. I therefore find that the tenants are entitled to a monetary award of \$1,034.00 for the remaining portion of their deposits. I also find that the tenants are entitled to a monetary award of \$1,675.00, the amount of their original deposits, to reflect the failure of the landlords to comply with the provisions of section 38 of the *Act*. No interest is payable over this period.

Having been successful in this application, I find further that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms:

Item	Amount
Return of Remainder of Tenants' Pet Damage and Security Deposits (\$250.00 + \$1,425.00 - \$641.00 = \$1,034.00)	\$1,034.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,675.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$2,759.00

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) 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: October 10, 2012

Residential Tenancy Branch