



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend or submit any documentary evidence. The Tenant states that the Landlord was served on November 16, 2012 by Canada Post Priority Post with a signature requirement and has submitted the Customer Tracking No. and Receipt as confirmation. I accept the undisputed testimony of the Tenant and find that the Landlord was properly served with the notice of hearing package.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

The Tenant states that the Tenancy ended on October 30, 2012 on which the keys and the Tenant's forwarding address in writing was personally given to the Landlord. The Tenant states that she has requested the \$450 security and \$200.00 pet deposits returned, but has not received it from the Landlord.

Section 38 of the Residential Tenancy Act states,

SECURITY DEPOSIT RETURN

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I find that based upon the undisputed testimony of the Tenant that as of the date of this hearing the Landlord has failed to return the combined \$650.00 deposits to the Tenants nor has he filed for dispute resolution. Pursuant to Section 38 (6)(b), the Tenant has established a monetary claim for double the combined security and pet damage deposits of \$1,300.00. The Tenant is also entitled to recovery of the \$50.00 filing fee.

The Tenant as part of the application and during the hearing has conceded \$429.00 in damages to the rental. This consists of \$144.00 for utilities, \$225.00 for flooring installation and \$60.00 for paint. As the Tenant has conceded \$429.00 to the Landlord, the Tenant is entitled to \$921.00.

The Tenant is granted a monetary order for \$921.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$921.00.

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: February 20, 2013

Residential Tenancy Branch

