



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 as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit and double their pet damage deposit.

The tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenants presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The tenants provided affirmed testimony that the Notice and evidence was served on the landlord by registered mail on January 8, 2013. The tenants provided a registered mail receipt with tracking number as evidence and confirmed during the hearing that according to the online tracking website information, the landlord signed for an accepted their registered mail package on January 10, 2013. I find the landlord was duly served in accordance with the *Act*.

Preliminary Matter

At the outset of the hearing, the tenants requested to recover their filing fee. The tenants were advised that if they were successful with their application, they would be granted the recovery of their filing fee.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit and pet damage deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on September 17, 2010 and reverted to a month to month tenancy as of October 1, 2011. Monthly rent in the amount of \$800.00 plus utilities was due on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$400.00 was paid by the tenants on September 17, 2010.

The tenancy ended on April 29, 2012 when the tenants vacated the rental unit, having served a one month notice in writing via personal service to the landlord on March 31, 2012.

The tenants provided their written forwarding address to the landlord on May 8, 2012, and the landlord signed that document which was submitted in evidence. The tenants stated that they have not received any of their security deposit or pet damage deposit back from the landlord since vacating the rental unit and are now seeking double the return of the security deposit and pet damage deposit pursuant to section 38 of the *Act*.

The tenants testified that they were not asked by the landlord to participate in a move-in condition inspection, or a move-out condition inspection. The tenants stated that they did not sign over any portion of the security deposit or pet damage deposit to the landlord.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' claim for the return of double the security deposit and pet damage deposit – I accept that the tenancy ended on April 29, 2012. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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.

[emphasis added]

In the matter before me, **I find** that the landlord did not repay the security deposit and pet damage deposit or make an application for dispute resolution claiming against the deposits. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit and pet damage deposits in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing on May 8, 2012 having not made a claim towards the deposits. Therefore, **I find** the tenants are entitled to the return of double the original security deposit of \$400.00 and the original pet damage deposit of \$400.00 for a total of **\$1,600.00**. This amount represents the original \$800.00 in combined deposits doubled to \$1,600.00 due to the landlord breaching section 38 of the *Act*. I note that both deposits accrued no interest since the start of the tenancy.

As the tenants were successful with their application, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,650.00**, comprised of \$1,600.00 for the doubled security deposit and pet damage deposit, and the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,650.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenants have established a total monetary claim of \$1,650.00 comprised of the return of double their security deposit of \$400.00 and pet damage deposit of \$400.00 for a total amount of \$1,600.00 plus the \$50.00 filing fee. I grant the tenants a monetary order under section 67 in the amount of \$1,650.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 27, 2013

Residential Tenancy Branch

