



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNSD & FF

Introduction

A hearing was conducted by conference call in the absence of the applicant and in the presence of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides. With landlord seeks an order to retain the security deposit plus the cost of the filing fee. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on September 1, 2008. The tenancy ended on March 31, 2013. The rent at the time the tenancy ended was \$1000 per month payable on the first day of each month. The tenant paid a security deposit of \$487.50 on August 16, 2008. The interest on the security deposit is \$2.76.

Monetary Order and Cost of Filing fee

The landlord failed to appear at the scheduled starting time for the hearing. The tenant and her agent were present and ready to proceed. I waited 10 minutes and recalled the hearing. The landlord still had not appeared. As a result I proceeded with the hearing in the absence of the Landlord.

The landlord has the burden of proof. As the landlord failed to appear at the hearing **I ordered that the Landlord's application be dismissed without liberty to re-apply.** The tenant requested an order for the return of the security deposit plus interest.

Policy Guideline #17 includes the following statement.

**"RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH
ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act.

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return."

I determined the tenant's right to the deposit has not been extinguished and that the tenant is entitled to the order for the return of the security deposit plus interest. **I ordered that the Landlord pay to the Tenant the security deposit plus interest in the sum of \$490.26.**

It is further Ordered that this sum be paid forthwith. The respondent is given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the applicant fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order 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: June 10, 2013

Residential Tenancy Branch

