



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 tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for the return of double his security deposit and pet damage deposit, plus the recovery of the filing fee.

The tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the tenant presented his evidence. A summary of the tenant's 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 tenant provided affirmed testimony that the Notice and evidence was served on the landlord by registered mail on June 6, 2013. The tenant provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the landlord and the service address provided by the landlord on the 1 Month Notice issued by the landlord dated April 2, 2013, and submitted in evidence to support that the tenant had the correct service address of the landlord. Documents sent by registered mail are deemed served five days after mailing under the *Act*. The tenant stated that the registered mail was returned as "unclaimed". I find the landlord was duly served on the fifth day after mailing, in accordance with the *Act*, which in the matter before me, is June 11, 2013. I note that refusal or failure to accept service does not constitute grounds for a Review.

Issue to be Decided

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

Background and Evidence

The tenant stated that a fixed term tenancy agreement began on or about May 1, 2009, and reverted to a month to month tenancy after May 1, 2010. Monthly rent in the amount of \$1,350.00 was due on the first day of each month. A security deposit of \$675.00 and a pet damage deposit of \$100.00 were paid by the tenant, which the tenant stated the landlord continues to hold.

The tenancy ended on April 30, 2013 when the tenant vacated the rental unit after being served with a 1 Month Notice to End a Tenancy for Cause by the landlord, dated April 2, 2013, and with an effective vacancy date of April 30, 2013. The tenant testified that he wrote his forwarding address on a piece of paper dated April 30, 2013, however, did not provide the written forwarding address to the landlord until May 2, 2013, as the landlord was not available to meet him at the rental unit until May 2, 2013 for the return of the rental unit keys. The tenant submitted a copy of the written forwarding address dated April 30, 2013 in evidence.

The tenant stated that the landlord failed to complete an incoming condition inspection report at the start of the tenancy, and that a written outgoing condition inspection report was not completed by the landlord. The tenant is claiming for the return of double his security deposit and pet damage deposit under section 38 of the *Act*.

The tenant stated that the landlord did not return any of his security deposit or pet damage deposit, and did not file an application to retain either deposit under the *Act*. The tenant testified that he did not sign over any portion of his security deposit or pet damage deposit to the landlord at any time.

I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. 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 testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for the return of double the security deposit and pet damage deposit – I accept that the tenancy ended on April 30, 2013. 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, the tenant testified that he provided his written forwarding address to the landlord on May 2, 2013 and that he did not provide permission for the landlord to retain any portion of his security deposit or pet damage deposit. Given the above, under section 38 of the *Act*, the landlord had to return the full security deposit and pet damage deposit to the tenant or file an application to claim towards the deposits within 15 days of receiving the tenant's forwarding address, the last day of which would have been May 17, 2013. Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants by May 17, 2013, having received the forwarding address of the tenant in writing on May 2, 2013, and taking in account that the landlord did not claim towards the security deposit or pet damage deposit. Therefore, **I find** the tenant is entitled to the return of double his original security deposit of \$675.00 and double the pet damage deposit of \$100.00 for a total of **\$1,550.00**. I note that the security deposit and pet damage deposit has accrued \$0.00 in interest since the start of the tenancy.

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

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$1,600.00**, comprised of \$1,550.00 for the doubled security deposit and pet damage deposit, and the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,600.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenant has established a total monetary claim in the amount of \$1,600.00, comprised of \$1,550.00 for the doubled security deposit and pet damage deposit, and the \$50.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$1,600.00. This order must be served on the landlord and 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: September 09, 2013

Residential Tenancy Branch

