



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 an application by the tenant for a monetary order in the amount of double the security deposit and pet damage deposit. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced April 1, 2013. The monthly rent of \$1210.00 was due on the first day of the month. The tenant paid a security deposit of \$605.00 and a pet damage deposit of \$605.00.

The tenancy ended, apparently by mutual agreement, on August 31, 2013. The tenant provided the landlord with his forwarding address in writing on that date.

On September 12 the landlord issued a cheque in the amount of \$605.00 – a full refund of the security deposit – and sent it by regular mail from its' head office in Toronto to the tenant. The tenant says he received the cheque on September 24.

The landlord had only taken over responsibility for managing this building on August 28. It appears that the records were not complete and there was some confusion as to whether the tenant had paid a pet damage deposit or not. Eventually it was confirmed that the tenant had paid a pet damage deposit and on September 19 the landlord issued a second cheque in the amount of \$605.00 – a full refund of the pet damage deposit - and sent it by courier to the tenant from the head office in Toronto. The tenant testified that he received this cheque on September 19.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the

tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

Subsection (1) says that the landlord must repay to the tenant, not that the tenant must receive the payment within the fifteen day time limit. There is no evidence that the refund of the security deposit was not mailed on the same day that it was issued. Accordingly, I find that the landlord did repay the security deposit within the fifteen day time limit.

The cheque for the pet damage deposit was issued and mailed after the expiry of the fifteen day limit. As a result the landlord is subject to the section 38(6) penalty with respect to the pet damage deposit only.

Conclusion

I find that the tenant has established a total monetary claim of \$655.00 comprised of \$605.00 penalty for late payment of the pet damage deposit and the \$50.00 fee paid by the tenant for this application and I grant the tenant a monetary order in that amount. If necessary, this order may be filed in the Small Claims 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: December 12, 2013

Residential Tenancy Branch