



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of her pet damage and security deposits (the deposits) pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that she sent the landlord a copy of her dispute resolution hearing package by registered mail on September 24, 2013. The landlord confirmed that she received the tenant's dispute resolution hearing package. I am satisfied that the tenant served her hearing package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her deposits? Is the tenant entitled to a monetary award equivalent to the amount of her deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed sworn testimony that she commenced a four-month sublet of this rental unit on May 1, 2013. Her tenancy ended on August 31, 2013, at which time she vacated the rental unit. The parties agreed that monthly rent was set at \$1,250.00, payable in advance on the first of each month. The tenant testified that she paid \$650.00 to the landlord by way of an email payment prior to May 1, 2013 as a security deposit. When the landlord testified that the amount of the security deposit was actually \$625.00, representing one-half of the monthly rent, the tenant said that she would not contest the landlord's claim that the security deposit was \$625.00.

The tenant testified that she also paid the landlord a \$650.00 pet damage deposit on May 1, 2013. The landlord and her husband testified that no pet damage deposit was paid for this tenancy. The tenant said that she had no receipt for her cash payment of the pet damage deposit as the landlord never provided receipts for her payments.

The tenant's application for a monetary award of \$1,250.00 sought the return of her deposits, plus the recovery of her filing fee. The tenant testified that she provided her forwarding address to the landlord by email on August 30, 2013, and again in early September 2013. The landlord testified that in early September 2013, she received the tenant's forwarding address where the tenant was asking her to send her security deposit. The landlord and her husband said that they did not return the tenant's security deposit because the tenant had not paid her utility bill and rent remained owing.

Analysis

In this case, I find that the amount of the tenant's security deposit was \$625.00, as maintained by the landlord. As noted above, the parties presented conflicting sworn testimony as to whether any pet damage deposit was paid for this tenancy. Although the tenant said that she has a dog and always has to pay a pet damage deposit, she provided no supporting written evidence, receipt or confirmation that she paid a pet damage deposit. In the absence of any written confirmation that a pet damage deposit was paid for this tenancy, I find that no pet damage deposit was in place.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines are also of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. Both parties confirmed that the landlord has not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit. At the hearing, the tenant testified that she had not waived her right to obtain double her deposits on the basis of the landlord's contravention of the security deposit provisions of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double her security deposit with interest calculated on the original amount only. No interest is payable over this period. I also allow the tenant to recover her filing fee from the landlord.

Conclusion

I issue a monetary award in the tenant's favour under the following terms, which allows the tenant to recover her initial security deposit, plus an equivalent monetary award for the landlord's failure to abide by the provisions of section 38 of the *Act*, and to recover her filing fee for this application:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$625 x 2 = \$1,250.00)	\$1,250.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,300.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 11, 2013

Residential Tenancy Branch

