



Dispute Resolution Services

Page: 1

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 under the *Residential Tenancy Act* (the "Act"). The tenant applied for monetary order for double the return her security deposit and pet damage deposit under the *Act*, and to recover the filing fee.

The tenant attend the teleconference hearing and provided affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing (the "Notice of Hearing") was considered. The tenant testified that she served the landlord with the Notice of Hearing via registered mail on October 15, 2013 and provided a tracking number in evidence. The tenant stated that the registered mail package was addressed to the landlord and according to the online registered mail tracking website, the registered mail package, which contained evidence, was successfully delivered to the landlord when the landlord, LW, signed for the package on October 18, 2013. Based on the documentary evidence and the undisputed testimony of the tenant, I accept that the landlord was served on October 18, 2013, when the landlord accepted service of the registered mail package.

Preliminary and Procedural Matter

During the hearing, the tenant requested to add the landlord's full legal name to her application. Therefore, the landlord's "aka" (which stands for "also known as") name was added to the tenant's application and will be included in any resulting orders, should the tenant be successful with any portion of her application. I find that such an amendment does not prejudice either party.

Issue to be Decided

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

Background and Evidence

The tenant provided a copy of the tenancy agreement in evidence. A fixed term tenancy agreement was signed by the parties on March 31, 2012 and began on May 1, 2012 and was scheduled to revert to a month to month after April 30, 2013. Originally, monthly rent in the amount of \$1,100.00 was due on the first day of each month and was subsequently increased during the tenancy to “\$1,140.00 or so” in July of 2013, according to the tenant. The tenant testified that a security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid by the tenant at the start of the tenancy.

The tenant stated that she vacated the rental unit on September 22, 2013. The tenant testified that the landlord did not complete an incoming or an outgoing condition inspection report during the tenancy.

The tenant stated that on September 23, 2013 the tenant provided her written forwarding address to the landlord by personally serving the landlord with her written forwarding address. The tenant stated that on October 11, 2013, she received a letter and a cheque from the landlord in the amount of \$17.00, which she stated the letter from the landlord alleged that the tenant left the rental unit unclean and damaged and that the landlord was only returning \$17.00 as a result. The tenant stated that she has not yet cashed the cheque for \$17.00 from the landlord and applied for double the return of her security deposit and pet damage deposit on October 11, 2013.

Analysis

Based on the above, the undisputed testimony of the tenant and the tenant’s undisputed documentary evidence, and on a balance of probabilities, I find the following.

Tenant’s claim for the return of double the security deposit and double the pet damage deposit – I accept the tenant’s undisputed testimony that the landlord did not complete an incoming or outgoing condition inspection report during the tenancy. I also accept that the tenant provided her written forwarding address to the landlord on September 23, 2013 and that the landlord returned \$17.00 of the tenant’s \$550.00 security deposit and \$550.00 pet damage deposit, which was received by the tenant on October 11, 2013.

There was no evidence before me to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit or pet damage deposit, which has accrued no interest to date. There was also no evidence before me to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or the date of receipt of the written forwarding address of the tenant, to retain any portion of the security deposit or pet damage deposit. By failing to perform incoming or outgoing condition inspection reports, **I find** the landlord had extinguished their right to claim against the security deposit and pet damage deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit and pet damage deposits are held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit or pet damage deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenant. In the matter before me, **I find** the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security to the tenant within 15 days in accordance with the *Act*. 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 breached section 38 of the *Act* by failing to return the tenant's security deposit and pet damage deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on September 23, 2013, having not made a claim towards either deposit, and by not having the written permission of the tenant to retain any portion of either deposit.

Given the above, **I find** the tenant is entitled to the return of double the original security deposit of \$550.00 and double the original pet damage deposit of \$550.00 for a total of \$2,200.00, which is comprised of \$1,100.00 for the doubled security deposit, and \$1,100.00 for the doubled pet damage deposit. I note that the tenant's security deposit accrued \$0.00 in interest since the start of the tenancy; however, I will deduct \$17.00 from the \$2,200.00 amount as the landlord issued the tenant a cheque dated October 10, 2013 and received by the tenant on October 11, 2013 in the amount of \$17.00, which the tenant states she has not cashed, and which I find is not yet deemed stale-dated. Therefore, **I find** the tenant is entitled to **\$2,183.00** for this portion of their claim, which is comprised of the \$2,200.00 in the doubled security deposit and doubled pet damage deposit, less \$17.00 returned to the tenant by the landlord as the tenant can still cash the \$17.00 cheque dated October 10, 2013, which is not yet considered stale-dated.

As the tenant's application had merit, **I grant** the tenant the recovery of their 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 **\$2,233.00**, comprised of \$2,200.00 for the doubled security deposit and doubled pet damage deposit, less \$17.00 paid by the landlord to the tenant by cheque dated October 10, 2013, plus the \$50.00 filing fee. **I grant** the tenant monetary order pursuant to section 67 of the *Act* in the amount of **\$2,233.00**. 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

The tenant has established a total monetary claim of \$2,233.00 as described above. The tenant has been granted a monetary order under section 67 in the amount of \$2,233.00. 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: January 22, 2014

Residential Tenancy Branch

