



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the tenant's submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

Both parties have confirmed that the tenancy ended on May 31, 2014 and that the tenant provided her forwarding address by text to the landlord and then later by Canada Post Registered Mail on June 2, 2014 in writing. The tenant has provided copies of a hand written receipt for the pet damage and security deposit, a letter dated June 1, 2014 requesting the return of the \$1,100.00 combined deposits and a copy of the returned envelope package that was unclaimed by the landlord.

The landlord states that upon receiving the notice of hearing package, the landlord tried to return the combined deposits twice, but did not as the tenant stated that she would refuse this. The tenant has disputed this claim. The landlord states that he has evidence to support this but has provided not provided any. The landlord stated that there were cleaning issues with the rental and that he wanted to retain \$100.00 for cleaning up because of pet stains.

Analysis

Section 38 of the Residential Tenancy Act states,

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

It is clear based upon the undisputed testimony of the landlord that he failed to return the combined \$1,100.00 deposits within the allowed timeframe, nor did the landlord apply for dispute resolution to retain it. Therefore, section 38 (6) of the Act applies. The landlord must pay the tenant double the amount of the security and pet damage deposits for failing to comply. The tenant has established a claim for \$2,200.00. The tenant is also entitled to recovery of the \$50.00 filing fee. The tenant is granted a monetary order for \$2,250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$2,250.00.

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: November 06, 2014

Residential Tenancy Branch

