



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 in response to an application by the tenant under the *Residential Tenancy Act* (the Act) for an Order for the return of their security deposit and recovery of the filing fee. The tenant participated in the conference call hearing and the landlord did not. The tenant testified they served the landlord with the application for dispute resolution and Notice of Hearing by registered mail and that it had not been returned to the tenant. The tenant provided proof of the mail registration particulars indicating the registered mail was sent July 14, 2014. I found that the landlord was served with notice of the tenant's claim against them in accordance with Section 89 of the Act, and the hearing proceeded in the landlord's absence.

Issue(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Background and Evidence

The tenant's undisputed evidence is as follows. The tenant paid a sum \$1200.00 in security and pet damage deposits at the start of the tenancy of April 01, 2013. The tenancy ended May 31, 2014. Subsequently, the parties personally met on June 18, 2014 at which time the tenant provided the landlord their forwarding address in writing. The tenant testified that at the same meeting the landlord gave the tenant \$620.00 and retained \$580.00 of the tenant's deposits, purportedly because the tenant's movers caused some damage at the time of the tenant's move. Effectively, the tenant testified that there was no agreement between the parties for the landlord to retain any portion of the deposits.

Analysis

On preponderance of the undisputed evidence I find as following;

Section 38(1) of the Act provides as follows;

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

In this matter I find that the landlord failed to repay the deposits, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under **Section 38(6)** which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord was obligated under Section 38 to return the original sum amount of \$1200.00. The amount which is doubled is the \$1200.00 original amount of the deposits. As a result I find the tenant has established an entitlement claim for \$2400.00, from which I deduct the amount of \$620.00 already returned. The tenant is further entitled to recovery of the \$50.00 filing fee, for a total award of **\$1830.00**.

Calculation for Monetary Order

Original security and pet damage deposits	\$1200.00
Double amount of deposits – Section 38(6)	1200.00
<i>Portioned of deposits returned to tenant</i>	<i>-620.00</i>
Filing fee	50.00
Total monetary award	\$1830.00

Conclusion

I grant the tenant a Monetary Order under Section 67 for the amount of **\$1830.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 08, 2014

Residential Tenancy Branch

