



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 the tenant for a monetary order for the return of the security and pet damage deposits and recovery of the filing fee.

The tenant's agent attended the hearing by conference call and gave undisputed testimony. The landlord did not attend. Neither party submitted any documentary evidence. The tenant states that the landlord was served with the notice of hearing package by Canada Post Registered Mail on July 28, 2014 and has provided the Customer Receipt Tracking number in his direct testimony as confirmation that the landlord received and signed for the package.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant's agent states that the tenancy ended on May 31, 2014 and that her forwarding address in writing was received by the landlord on June 11, 2014 by Canada Post Registered Mail.

The tenant's agent states that the landlord withheld a portion of the combined \$675.00 security deposit and the \$675.00 pet damage deposits for claimed deductions without her permission. The tenant's agent states that the landlord returned \$1,123.49 on June 17, 2014. The tenant's agent clarified that the cheque was never cashed as the tenant thought that cashing it would be acceptance of the landlord's deductions.

The tenant's agent stated that as of the date of this hearing, the landlord has not returned the complete security and pet damage deposits and did not have permission from the tenant to retain any portion of it.

The tenant's agent seeks a monetary order for \$1,400.00 which consists of \$675.00 for the security deposit, \$675.00 for the pet deposit and \$50.00 for recovery of the filing fee.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of a security and pet damage deposits and 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.

I accept the undisputed evidence of the tenant and find that the tenant has established grounds that the landlord failed to return the complete security deposit and the pet damage deposits within 15 days after the end of the tenancy and when the landlord received the tenant's forwarding address in writing on June 11, 2014. The landlord did not have permission to retain it nor has the landlord filed an application to dispute the return of it.

Section 38 (6) applies and I find that the tenant has established a claim for \$2,700.00 equal to double the combined security and pet damage deposits (\$1,350.00). The tenant is also entitled to recovery of the \$50.00 filing fee.

I grant the tenant a monetary order for \$2,750.00. 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 \$2,750.00.

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: January 30, 2015

Residential Tenancy Branch

