



Dispute Resolution Services

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:

- a monetary order for return of all or a portion of his security deposit and pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although it lasted approximately 44 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord's agent, "MR," with the tenant's Application for Dispute Resolution hearing package ("Application") on February 6, 2015, by registered mail at MR's address. MR's address is the same as the rental unit address, as MR lived in the upper level of the house, while the tenant lived in the basement level, throughout this tenancy. After the tenant vacated, MR began occupying the entire house, including the basement level. The tenant stated that he attempted to obtain the landlord's mailing address by several different means, including searching online and by contacting MR, who did not know the landlord's address. The tenant stated that MR held himself out as the landlord's agent because rent and the security deposit were paid to MR only, the condition inspections were done with MR only and the main form of contact with the landlord was through MR, throughout this tenancy. The tenant provided a Canada Post receipt and tracking number to confirm service of these documents, with his Application. The tenant testified that he checked the Canada Post website, which confirmed that MR signed for the package. The tenant stated that he spoke with MR, who confirmed that he had received the tenant's Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord

was deemed served through her agent MR, with the tenant's Application on February 11, 2015, five days after its registered mailing.

Issues to be Decided

Is the tenant entitled to a monetary order for the return of double the amount of his security and pet damage deposits?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this month to month tenancy began in mid-March 2013 and ended on December 20, 2014. Monthly rent in the amount of \$850.00 was payable on the first day of each month. No written tenancy agreement exists for this tenancy. The tenant and his friend "JP" first occupied the rental unit together from the beginning of the tenancy until September 1, 2013, when JP moved out and the tenant's wife "DK" moved into the rental unit.

A cash security deposit of \$425.00 was paid by the tenant and JP on March 16, 2013 and the tenant received a receipt for this payment. A cash pet damage deposit of \$212.50 was paid by the tenant and DK at the beginning of October 2013, when the tenant brought a pet into his rental unit. The tenant testified that the landlord continues to retain both the tenant's security and pet damage deposits, in full.

The tenant stated that DK personally served the landlord's agent, MR, with a letter, dated November 14, 2014, on the same date. The tenant provided a copy of this letter with his Application. The letter provided notice of the tenant's intention to vacate the rental unit on December 20, 2014 and requested a return of the security and pet damage deposits in the total amount of \$637.50. The letter also provided the tenant's forwarding address.

The tenant testified that there was no unpaid rent owing at the end of this tenancy. The tenant stated that a move-in inspection was completed at the beginning of the tenancy and a move-out inspection was completed on December 20, 2014. The tenant confirmed that no condition inspection reports were completed by either party. The tenant stated that he sufficiently cleaned the rental unit and repaired any damages when he vacated. The tenant confirmed that he did not provide written permission to the landlord to retain any amount from the tenant's security or pet damage deposits. The tenant indicated that he spoke with the landlord's agent MR on January 3, 2015, advising him that the next day was the 15 day deadline after which the landlord had to

return the tenant's deposits in full. At that time, the landlord indicated that she wished to deduct \$570.00 for siding and painting repairs, to which the tenant disagreed with the painting cost and asked for a proper quotation for siding repairs, which he never received. The tenant stated that he did not orally agree to any deductions from his deposits but indicated that he would discuss any issues with the landlord when provided with written quotations for any possible damages. The tenant stated that the landlord attempted to return \$100.00 from the security deposit to the tenant on January 4, 2015, but that the tenant rejected this transfer because he disagreed with the damage deductions being made by the landlord. In any event, the landlord did not attempt to return the entire security deposit to the tenant, at that time.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, emails, photographs, and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of the tenant's security and pet damage deposits or file for dispute resolution for authorization to retain the deposits, within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security and pet damage deposits to offset damages or losses arising out of the tenancy (section 38(3)(b)) or if an amount at the end of the tenancy remains unpaid (section 38(4)(a)).

The tenant seeks the return of double the value of his security deposit in the amount of \$425.00 and pet damage deposit in the amount of \$212.50, from the landlord. The tenant provided his forwarding address to the landlord in writing on November 14, 2014. The tenancy ended on December 20, 2014. The tenant did not give the landlord written permission to retain any amount from his security or pet damage deposits. The landlord did not return these deposits to the tenant or make an application for dispute resolution to claim against these deposits, within 15 days of the end of this tenancy.

The landlord continues to hold the tenant's security deposit of \$425.00 and pet damage deposit of \$212.50, totalling \$637.50. Over that period, no interest is payable on the landlord's retention of the deposits. In accordance with section 38(6)(b) of the *Act*, I find

that the tenant is entitled to double the value of his security and pet damage deposits, totalling \$1,275.00.

As the tenant was successful in his Application, he is entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,325.00 against the landlord under the following terms, which allows the tenant an award of double his security deposit and pet damage deposit plus the recovery of his filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ($\$425.00 \times 2 = \850.00)	\$850.00
Return of Double Pet Damage Deposit as per section 38 of the Act ($\$212.50 \times 2 = \425.00)	425.00
Recovery of Filing Fee for Application	50.00
Total Monetary Order	\$1,325.00

The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: March 04, 2015

Residential Tenancy Branch