



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 a Monetary Order for the return of their security/pet deposit and compensation under Section 38. The application is inclusive of an application for 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, along with all of their evidence, by registered mail. The tenant provided proof of registered mail service sent\dated October 01, 2014, including the tracking number for the registered mail sent to the landlord at their address. I found that the landlord was properly served with notice of the claim against them pursuant to Section 89 of the Act and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant facts before me are as follows.

The tenancy began September 01, 2012 and ended August 31, 2014. Rent was \$1400.00 per month. The landlord collected a security deposit and a pet damage

deposit of \$700.00 *respectively* at the outset of the tenancy (\$1400.00, the deposit), of which they returned the sum of \$540.00 after the tenancy ended, and have retained \$860.00 for some claimed cleaning, repairs and a claimed, albeit disputed, broken lease respecting a second pet. There were no *move in* and *move out* inspections conducted by the landlord in accordance with the Act. At the end of the tenancy the parties did not agree as to the administration of the deposit. The tenant requested its return, and the landlord determined to retain the bulk of the deposit. The tenant testified that they provided the landlord with their forwarding address by e-mail on September 16, 2014 but also sent the landlord their written forwarding address by regular mail on September 18, 2014.

Analysis

On preponderance of the relevant evidence for this matter, I have reached a Decision.

I find that **Section 38(1)** of the Act provides as follows (**emphasis mine**)

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.

I find that the landlord failed to repay all the deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing – deemed by Section 90 of the Act to have been received September 24, 2015.

Therefore, I find the landlord is 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 currently holds a deposit total of \$860.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original remaining amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1720.00 and is further entitled to recovery of the 50.00 filing fee for a total entitlement of **\$1770.00**.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1770.00**. 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: May 05, 2015

Residential Tenancy Branch

