



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for the return of double his pet damage deposit, plus the recovery of the cost of the filing fee.

The tenant and landlord J.W. attended the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their evidence is provided below and includes only that which is relevant to the hearing.

The parties confirmed having received and reviewed the documentary evidence from the other party prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

Issues to be Decided

- Is the tenant entitled to the return of double his pet damage deposit under the *Act*?
- Is the tenant entitled to the recovery of his filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Originally, a fixed term tenancy began on September 1, 2013 and reverted to a month to month tenancy after March 31, 2013. Monthly rent of \$1,000 plus \$150 in utilities was due on the first day of each month. The tenant paid a security deposit of \$500 and a pet damage deposit of \$500 at the start of the tenancy.

The parties agreed that the tenant vacated the rental unit on August 1, 2014. The parties agreed that the tenant provided his written forwarding address by email on September 13, 2014 and that landlord J.W. received that email and replied to that email.

The tenant confirms in his application that he received his \$500 security deposit back on September 8, 2014; however, the parties confirmed that the \$500 pet damage deposit was never returned to the tenant. The parties agreed that the tenant has not signed over any portion of the \$500 pet damage deposit to the landlords. The landlord testified that they have not submitted an application claiming against the tenant's pet damage deposit. Given the above, there is no dispute that the tenant's pet damage deposit has not been returned to the tenant by the landlords.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim – I accept that the tenancy ended on August 1, 2014 when the tenant vacated the rental unit. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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.

(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.

[my emphasis added]

In the matter before me, the parties agreed that although the tenant did receive his security deposit back from the landlords on September 8, 2014, the tenant has not received his pet damage deposit back, and the landlords did not submit an application claiming towards the tenant's pet damage deposit. Furthermore, landlord J.W. confirmed that they did not have permission from the tenant to deduct any amount from the tenant's pet damage deposit.

Given the above, and pursuant to section 38 of the *Act*, I find the landlords had to either return the tenant's full pet damage deposit, which has accrued no interest, to the tenant or file an application to claim towards the pet damage deposit within 15 days of September 13, 2014, which is later than the end of tenancy date, and is the date the landlord confirmed having received the tenant's forwarding address. Accordingly, the landlords had to return the tenant's pet damage deposit in full or file an application claiming towards the pet damage deposit by September 28, 2014, which the landlords failed to do. In addition, the landlords did not have authorization from the tenant to retain any portion of the pet damage deposit.

Based on the above, I find the landlords have breached section 38 of the *Act* by failing to return the pet damage deposit in full to the tenant within 15 days of September 13, 2014 as described above, having not made a claim towards the pet damage deposit. Therefore, I find the tenant is entitled to the return of double his original pet damage deposit of \$500 in the amount of **\$1,000**.

As the tenant's application had merit, I grant the tenant the recovery of his filing fee in the amount of **\$50**.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$1,050**, comprised of \$1,000 for the doubled pet damage deposit which has accrued no interest, plus the \$50 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,050**. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application is successful.

The tenant's pet damage deposit has been doubled due to the landlords breaching section 38 of the *Act*. The tenant has been granted a monetary order under section 67 in the amount of \$1,050. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2015

Residential Tenancy Branch

