



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for the return of double her security deposit, pet damage deposit and key deposit under the *Act*.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on March 10, 2016. The tenant provided a registered mail tracking number in evidence which has been included on the cover page of this Decision for ease of reference. The tenant confirmed that the name and address on the registered mail package matched the name of the landlord and the address of the landlord as the landlord had served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") and was witnessed moving into the rental unit by the tenant's witness. The tenant's witness affirmed that the landlord was living in the address to which the tenant mailed the hearing documents.

According to the online registered mail tracking website, the landlord did not pick up the registered mail package and it was eventually returned to sender. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the landlord is deemed served with the Notice of Hearing, Application and documentary evidence as claimed by the tenant as of March 15, 2016

which is five days after it was mailed. I note that refusal or neglect to accept a registered mail package does not constitute grounds for Review Consideration.

Issue to be Decided

- Is the tenant entitled to the return of double her security deposit, pet damage deposit and key deposit under the *Act*?

Background and Evidence

The tenant submitted a copy of the tenancy agreement in evidence. The tenant testified that she paid a security deposit of \$750.00, a pet damage deposit of \$100.00 and a key deposit of \$100.00. The tenant stated that she vacated the rental unit as of January 31, 2016, which was the amended effective date of the 2 Month Notice. The tenant stated that landlord hand delivered a cheque to the tenant in the amount of \$500.00 which she cashed. The tenant testified that she did not give the landlord permission to keep any portion of the security deposit, pet damage deposit or key deposit.

The tenant stated that the landlord has not claimed against the tenant's security deposit or pet damage deposit. The tenant testified that she served her written forwarding address on the landlord on February 1, 2016 and that the landlord responded to the written forwarding address by giving her a cheque for \$500.00 but did not have authority to keep the remainder of her deposits.

The tenant is seeking the return of double her deposits as a result and stated that she returned her key yet did not receive her \$100.00 key deposit back from the landlord.

Analysis

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

As the landlord was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the landlord. There was no evidence before me to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit or pet damage deposit, neither of which has accrued interest to date. There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit or pet damage deposit.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit or pet damage deposit, and did not return either deposit to the tenant in full within 15 days of February 1, 2016 as required by the *Act* and has not applied against either deposit.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit and pet damage deposit. The legislation does not provide any flexibility on this issue. Given the above, I find the landlord breached section 38 of the *Act* by failing to return the tenant's entire security deposit and pet damage deposit as required by the *Act* given that the landlord clearly received the tenant's forwarding address by providing the tenant with a cheque in the amount of \$500.00; however, the landlord neglected to obtain written permission of the tenant or file an application to claim against the deposits.

Therefore, I find the tenant is entitled to double the tenant's security deposit of \$750.00 in the amount of **\$1,500.00**. In addition, I find the tenant is entitled to the double the tenant's pet damage deposit of \$100.00 in the amount of **\$200.00**. Further, I accept the tenant's undisputed testimony that the landlord failed to return her \$100.00 key deposit, which does not double under section 38 of the *Act*, which I find results in **\$100.00** owing to the tenant for the return of her key deposit.

Based on the above, I find the tenant's application is fully successful as follows:

ITEM DESCRIPTION:	AMOUNT AWARDED:
1. Security deposit of \$750.00 X 2	\$1,500.00
2. Pet damage deposit of \$100.00 x 2	\$200.00
3. Return of \$100 key deposit	\$100.00
SUBTOTAL	\$1,800.00
<i>Less \$500.00 cheque paid by landlord and cashed by tenant</i>	<i>-\$500.00</i>
TOTAL AMOUNT OWING BY LANDLORD TO TENANT	\$1,300.00

I grant the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of **\$1,300.00** comprised of \$1,700.00 in doubled security deposit and pet damage deposit, plus \$100.00 for the return of the

key deposit, less \$500.00 for the cheque already cashed by the tenant from the landlord.

Conclusion

The tenant's application is mostly successful.

The tenant has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of \$1,300.00. The tenant must serve the landlord with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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: October 24, 2016

Residential Tenancy Branch

