



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction and Preliminary Matter

This hearing dealt with an Application by the Tenants for a monetary order for return of double the pet damage deposit paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenants appeared at the hearing. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants testified that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on June 21, 2016. The registered mail tracking number is recorded on the unpublished cover page of this my Decision. The Tenants' documentary evidence indicates the registered mail was not claimed by the Landlord and returned to the Tenants. I note that neglect or refusal to accept registered mail is not a ground for review under the *Act*. Section 90 of the *Residential Tenancy Act* provides that documents served by registered mail are deemed received five days later. Accordingly, I find the Landlord has been duly served in accordance with the *Act*.

The Tenant K.M. testified that the tenancy began January 15, 2015. Monthly rent was \$1,200.00 per month and the Tenants paid the Landlord a security deposit of \$300.00 and a pet damage deposit of \$300.00 before the tenancy began.

M.G. testified that the tenancy ended June 1, 2016.

M.G. testified that she provided her forwarding address to the Landlord by text message. K.M. could not recall if she had provided her forwarding address to the Landlord.

Section 38 of the *Residential Tenancy Act* provides as follows:

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.

(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.

One Tenant testified that she sent her forwarding address to the Landlord by text message. The other Tenant could not recall if she had sent her forwarding address in any manner.

As I indicated during the hearing, sending a forwarding address by text messaging does not fulfill the requirement of section 38(1)(b); accordingly, the Tenants' application for return of double their pet damage deposit is premature as the Landlord is not required to return the deposit until the later of the end of the tenancy or receipt of the Tenants' forwarding address in writing.

The Tenants Application is dismissed with leave to reapply. The Tenants must send their request for return of the pet damage deposit and their forwarding address in writing to the Landlord.

This decision is final and binding on the parties, except as 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: December 13, 2016

Residential Tenancy Branch