



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnsd, ff

Introduction

The tenant applies for the return of her pet damage deposit, and her filing fee.

The tenant attended the hearing. The landlord did not attend. The landlord was properly served with the tenant's claim and notice of this hearing by way of registered mail. I find that this material was deemed to have been received by the landlord pursuant to section 90 of the Residential tenancy Act.

Issue(s) to be Decided

Is the tenant entitled to the return of the pet damage deposit?

Is the tenant entitled to recover her filing fee?

Background and Evidence

This tenancy began April 1, 2012 and ended on November 30, 2016. The tenant paid a security deposit of \$600.00 at the start of the tenancy, which has been returned subject to a deduction for utilities agreed to by the tenant. The tenant also paid a pet damage deposit, and only \$33.50 of this deposit has been returned by the landlord. No condition inspection was done at the start of the tenancy, and no condition inspection report prepared by the landlord at the start of the tenancy. The tenant provided her new forwarding address to the landlord in writing on December 12, 2016.

At the end of the tenancy, a condition inspection took place and the tenant verbally agreed that she would pay a small sum for the cost of replacing weather stripping. However, this was never confirmed in writing. The landlord did not return her pet damage deposit, other than \$33.50. No claim as against the deposit has been filed by the landlord, to date.

Analysis

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

Section 38(5) further provides that a landlord's right to retain all or part of a deposit is extinguished if the landlord fails to meet start of tenancy condition inspection report requirements. Those requirements require the landlord to both inspect the premises with the tenant at the start of the tenancy, and to prepare a written condition inspection report.

By failing to conduct the necessary condition inspection and prepare a condition inspection report at the start of the tenancy, the landlord's right to retain any of the pet damage deposit is extinguished pursuant to section 38(5). The 15 day period for the return of the deposit has long passed, but the full deposit was never returned. The tenant has waived her right to recover double the deposit from the landlord. The sum owed by the landlord to the tenant as repayment of her pet damage deposit is therefore \$366.50 (\$400.00 less \$33.50, the amount already returned). The landlord must also pay the cost of the tenant's \$100.00 filing fee. A monetary order for the sum of \$466.50 is granted to the tenant.

Conclusion

The landlord must pay to the tenant the sum of \$466.50.

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: February 15, 2017

Residential Tenancy Branch