



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD; FF; O

Introduction

This is the Tenant's Application for Dispute Resolution seeking return of the security deposit and pet damage deposit; to recover the cost of the filing fee from the Landlord; and other unspecified orders.

Both parties provided affirmed testimony at the Hearing.

The Landlord's agent acknowledged that he received the Notice of Hearing documents, by mail, at his office. Neither party provided documentary evidence to the Residential Tenancy Branch or to each other.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit and pet damage deposit?

Background and Evidence

The parties agreed on the following facts:

1. The tenancy began on November 1, 2015, and ended on October 31, 2016.
2. Monthly rent was \$1,750.00, due on the first day of each month.
3. The Tenant paid a security deposit in the amount of \$875.00.
4. Condition Inspections were completed at the beginning and at the end of the tenancy, with both parties present. The Tenant did not agree that the Landlord could retain any of the deposits.
5. The Landlord's agent received the Tenant's forwarding address in writing on March 1, 2017.

The Landlord's agent stated that the Tenant paid a pet damage deposit in the amount of \$187.50 at the beginning of the tenancy. The Tenant stated that he believed he paid \$200.00 as a pet damage deposit, but he was not certain.

Analysis

I find that the Tenant did not provide sufficient evidence that he paid a pet damage of \$200.00, and find that the pet damage deposit paid was \$187.50.

Section 38 of the Act provides:

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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

[Reproduced as written]

Based on the oral testimony of both parties, I find that the Landlord did not comply with Section 38(1) of the Act, and that the Tenant is entitled to compensation as provided in Section 38(6) of the Act.

The Tenant was successful in his Application and I find that he is entitled to recover the \$100.00 filing fee from the Landlord.

I hereby provide the Tenant with a Monetary Order, calculated as follows:

Security deposit	\$875.00
Pet damage deposit	<u>\$187.50</u>
Subtotal	\$1,062.50
Compensation pursuant to Section 38(6)	<u> x 2 </u>
Subtotal	\$2,125.00
Plus recovery of the filing fee	<u> \$100.00 </u>
TOTAL	\$2,225.00

Conclusion

The Tenant is hereby provided with a Monetary Order in the amount of **\$2,225.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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 15, 2017

Residential Tenancy Branch