



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute code MNSD

Introduction

This hearing dealt with an application filed by the tenant on March 10, 2017 under the *Residential Tenancy Act* (the “Act”) for return of security and pet damage deposits paid to the landlord.

Only the tenant appeared at the hearing. She provided affirmed testimony and had the opportunity to present documentary evidence and to make submissions.

As the landlord did not attend, service of the tenant’s application and notice of hearing was considered. The tenant testified that she sent these to the landlord’s mailing address by registered mail on March 13, 2017 and a copy of the Canada Post registered mail receipt was included in the tenant’s evidence. I accept that the landlord was duly served on March 18, 201, five days after the materials were mailed, in accordance with s. 90 of the Act.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Background and Evidence

There was no written tenancy agreement in evidence. The tenant advised that she could not locate a copy of the written agreement. According to the tenant’s undisputed and affirmed testimony, the tenancy began in 2007. Monthly rent was most recently \$1,226.40, due on the first of the month. A security deposit and a pet damage deposit

of \$600.00 each were paid at the beginning of the tenancy and remain in the landlord's possession.

The tenant vacated the premises on February 5, 2017 and had provided the landlord with her forwarding address by email on January 5, 2017 and by letter on January 8, 2017. A copy of a Canada Post registered mail receipt for the letter was in evidence.

Condition inspection reports were not conducted at either move-in or move out.

The tenant did not sign over a portion of the security or pet damage deposit and the landlord did not apply for authorization to retain them.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

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.

(Emphasis added)

Based upon the tenant's undisputed evidence, I find the landlord has breached the Act.

The tenant has not authorized the landlord to retain any portion of the deposits, and the landlord has not applied within 15 days of the end of the tenancy or receipt of the tenant's forwarding address to retain a portion of the deposits, as required by s. 38.

These deposits are held in trust for the tenant by the landlord, who may not keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the deposits or to deductions to be made to them, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord repay the tenant both deposits in the total amount of \$1,200.00, plus the interest accruing on the deposit of \$36.27. I must also order that the landlord pay the tenant double the original deposit.

As the tenant's application is successful, she is also entitled to the \$100.00 application filing fee.

Accordingly, I make a monetary order for the tenant and against the landlord in the total amount of **\$2,536.27**, calculated as follows:

Original deposit amount	\$1,200.00
Interest on above	\$36.27
Double original deposit amount	\$1,200.00
Application filing fee	\$100.00
TOTAL:	\$2,536.27

Conclusion

The tenant is given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

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 s. 9.1(1) of the Act.

Dated: May 17, 2017

Residential Tenancy Branch