



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of their pet damage deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 26, 2017. The tenants stated that the package was returned by Canada Post as "unclaimed" after attempts at service were made. I accept the tenants' undisputed affirmed evidence and find that the landlord was properly served as per sections 88 and 89 of the Act. Although the landlord failed to claim the package, I find that the landlord is deemed sufficiently served as per section 90 of the Act, 5 days later on May 31, 2017.

Issue(s) to be Decided

Are the tenants entitled to an order for return of the pet damage deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided both written and verbal testimony stating that this tenancy began on May 1, 2016 on a fixed term tenancy ending on April 30, 2017. The monthly rent was \$670.00 payable on the 1st day of each month. A security deposit of \$325.00 and a pet damage deposit of \$325.00 were paid.

The tenant seeks a monetary order for return of the \$325.00 pet damage deposit as the landlord has failed to return it. The tenants stated that the tenancy ended on April 30, 2017 and that their forwarding address in writing was provided to the landlord on April 30, 2017 on a form provided by the landlord and described as the condition inspection report for the move-out. The tenants stated that at no time was permission given to the landlord to retain the \$325.00 pet damage nor have they been served with an application for dispute of returning the pet damage deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed testimony of the tenants that the tenancy ended on April 30, 2017 and that their forwarding address in writing was provided to the landlord for the return of the pet damage deposit on April 30, 2017. I also accept the tenants' undisputed affirmed testimony that no permission was given to the landlord to retain the \$325.00 pet damage deposit nor have they been served with an application for dispute. As such, the tenants are entitled to return of the \$325.00 pet damage deposit.

Pursuant to section 38(6) the landlord having failed to comply with section 38(1) by returning the \$325.00 pet damage deposit within 15 days of receiving the tenants' forwarding address in writing or filing an application to dispute its return, the landlord is liable to an amount equal to the \$325.00 pet damage deposit.

The tenants have established a monetary claim for \$650.00.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants favour under the following terms which allows the tenants to recover their original pet damage deposit plus a monetary award equivalent to the value of their pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Pet Damage Deposit	\$325.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	325.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$750.00

The tenants are provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: October 27, 2017

Residential Tenancy Branch