



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On July 19, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing; however, the Landlord did not attend the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and evidence to the Landlord by registered mail on July 24, 2018 (the registered mail tracking number is on the first page of this decision). As well, they provided evidence that the Landlord signed to receive this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants stated that the tenancy started on August 1, 2017 and the tenancy ended on June 30, 2018. Rent was established at \$1,350.00 per month due on the first day of each month. A security deposit of \$675.00 and a pet damage deposit of \$675.00 were also paid.

The Tenants advised that the Landlord was provided with their forwarding address in writing by placing a letter in his mailbox on May 28, 2018. They submitted documentary evidence of this letter and confirmation of proof of service of this letter.

As of the hearing date, the Tenants stated that neither the security deposit nor the pet damage deposit were returned in full. In addition, the Landlord did not make an Application to keep the deposits within 15 days of receiving the forwarding address in writing. Furthermore, the Tenants advised that the Landlord stated outright that he would not be returning these deposits.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord was deemed to have received the Tenants' forwarding address in writing prior to the tenancy ending. As the tenancy ended on June 30, 2018, I find that this date is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord did not return the security deposit or pet damage deposit in full or make an Application to keep the deposits within 15 days of June 30, 2018. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without authority under the *Act* or having the Tenants' written consent.

As the Landlord did not return the security deposit and pet damage deposit in full or make an Application to retain them within 15 days of June 30, 2018, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38.

Consequently, I find that the Tenants have established a claim for a Monetary Order amounting to double the original security deposit and pet damage deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **\$2,700.00** in full satisfaction of this claim.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double the security deposit	\$1,350.00
Double the pet damage deposit	\$1,350.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,800.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$2,800.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 26, 2018

Residential Tenancy Branch