



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

DISPUTE CODES MNSD

INTRODUCTION

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. Monetary order for return of pet damage and/or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

Both parties appeared at the hearing and gave evidence under oath.

ISSUE

Are the tenants entitled to the Orders sought?

BACKGROUND AND EVIDENCE

The tenant testified that he vacated the premises on April 28, 2011 and supplied a forwarding address on the move-out inspection report. The landlord confirmed this to be the case. The tenant testified that to date the deposit has not been returned to the tenants.

The landlord agrees that the deposit has not been returned to the tenants and this is because the parties are in negotiation regarding the costs to be paid for the damages caused by the tenants.

FINDINGS

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 writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause to make such a claim.

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 deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security and pet deposits within 15 days of receipt of the tenants' forwarding address. Under the Act, the tenants would normally be entitled to a monetary order for double the total amount of the deposits. However, in the Application for Dispute Resolution served on the landlord, the tenant has requested only the return of the deposits. The landlord has only had notice of a claim being made against him/her in the sum of \$850.00 not \$1,700.00 which is the total of the two deposits. As a party has the right to know the full claim being made against them I will therefore only award the sum of which the landlord has had notice. Further, in this case the evidence shows that the security deposit was \$525.00 and the pet deposit was \$300.00 for a total of \$825.00, not the \$850.00 claimed. I will therefore only allow the tenants' claim in the sum of \$825.00. As the tenant has been successful with this application I will also award recovery of the filing fee as claimed in the sum of \$50.00 for a total of \$875.00.

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of 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*.
