



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on September 1, 2010 as month to month tenancy for a monthly rent of \$1,150.00 due on the 1st of each month and that a security deposit of \$575.00 and a pet damage deposit of \$575.00 were paid.

The tenant testified that he provided the landlord with his forwarding address on May 15, 2011 when he provided her with written notice of his intention to end the tenancy and that he later provided it again in a letter dated July 15, 2011.

The tenant testified that the landlord had provided her with a cheque for the return of both deposits but that it was returned to him as nonnegotiable due to insufficient funds. The tenant did not provide any confirmation of this.

The landlord testified that she never had the tenant's forwarding address until she was served with notice of this hearing in early September 2011. The landlord testified further that the tenant signed a move out Condition Inspection Report that he agreed to the deduction of both the pet damage deposit and the security deposit. The landlord did

not provide a copy of the Report. The tenant testified that he did not sign any such document.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any amounts mutually agreed upon or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

When faced with disputed testimony it is incumbent on the party making the claim to provide sufficient evidence to establish their claim. While the tenant has provided no corroborating evidence to establish that he provided his forwarding address to the landlord I find the tenant has failed to establish that he provided the landlord with his forwarding address as described.

However, since the landlord testified that she did receive the tenant's notice of hearing documents with the tenant's forwarding address in early September, 2011 I find the landlord had 15 days from receipt of this information to either return the deposit or file an Application for Dispute Resolution to claim against it.

As the tenant testified that he served the landlord with notice of this hearing by registered mail on September 8, 2011 and the landlord cannot remember the exact date I find, in accordance with Section 90 of the *Act*, that the landlord is deemed to have received the tenant's address on September 13, 2011.

Despite the landlord's claim that she the tenant signed a Condition Inspection Report authorizing her to keep both deposits, in the absence of any corroborating evidence I find the landlord had until September 13, 2011 to have return the deposits or file an Application for Dispute Resolution.

As the landlord failed to do either, I find that she has failed to comply with Section 38(1) and the tenant is entitled to double the amounts of both deposits in accordance with Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,350.00** comprised of \$1,150.00 double the security deposit; \$1,150.00 double the pet damage deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 24, 2011.

Residential Tenancy Branch