

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security and pet damage deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on May 1, 2010 on a fixed term tenancy which later changed to a month to month basis as shown in the copy of the signed tenancy agreement. The monthly rent was \$900.00 payable on the 1st of each month and a pet damage deposit of \$450.00 and a security deposit of \$450.00 was paid on April 25, 2010.

Both parties have attended the hearing and have made detailed reference to the evidence submitted by the other party.

The Tenant states that the Landlord failed to return the \$450.00 security and 4450.00 pet damage deposits within 15 days of the end of the tenancy. The Tenant states that she vacated the rental unit on June 10, 2011 and returned the keys and gave her forwarding address in writing to the Landlord on June 23, 2011. The Landlord states that he is unaware of when the Tenant vacated, but confirms that the Tenant returned the keys to the rental unit and received the forwarding address in writing on June 23, 2011.

The Landlord states that a cheque for \$450.00 was sent to the Tenant on July 15, 2011 for the return of the pet damage deposit. The Tenant states that she received the cheque for \$450.00 and cashed it in August of 2011.

Analysis

As both parties have attended the hearing and have made reference to the evidence submitted by the other, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

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.

Based upon the testimony of both parties, the tenancy ended on June 23, 2011 when the keys were surrendered and the forwarding address in writing was given to the Landlord. I find that the Landlord has failed to return the pet damage and security deposit within the allowed 15 days and has also failed to apply for dispute resolution claiming against the deposits.

Section 38 of the Act further states,

(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.

On this basis, I find that the Tenant has established her claim for the return of double the pet damage (\$450.00) and security (\$450.00) deposits. The Tenant has established a total claim of \$1,800.00. The Tenant is also entitled to the recovery of the \$50.00 filing fee. The Landlord returned the pet damage deposit of \$450.00 in August and this amount shall be offset in the Tenant's claim. I grant the Tenant a monetary order under section 67 for the balance due of \$1,400.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,400.00.

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 09, 2011.

Residential Tenancy Branch