



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit and pet damage deposit.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2011 and was to expire on March 1, 2012, however it ended on September 30, 2011 when the Tenant moved out. Rent was \$1,190.00 per month. The Tenant paid a security deposit of \$545.00 and a pet damage deposit of \$545.00 on February 11, 2011.

The Tenant said she verbally asked the Landlord to return her security deposit and pet damage deposit at the end of the tenancy but he later moved without advising her of his new address so she was unable to provide him with her forwarding address in writing. The Tenant said she later found the Landlord's new address where she served him with her hearing package which also included a cover letter. The Landlord produced a copy of this letter which he claimed stated as follows:

"[Name of Landlord],

RE: Residential Tenancy dispute for \$545.00 pet deposit and security deposit (\$1,090.00), + interest for [address of rental unit]

I have legally filed a dispute against you regarding my pet and damage deposit in the amount of \$1,190.00. I also want interest on the money since March 1, 2011. As you are and were well aware that I had to give up my lease after 6 months because I could no longer afford the \$1,190.00 per month plus utilities due to not working because of injury. You had just over one month's notice, you never once offered to lower the rent for me but before I actually talked to you on the phone, you had already posted the house on Kijiji. After 3 days of your ad advertised for the townhouse you lowered the rent and you had the

place rented immediately. When you came on September 30/11 for the walk through, you know you found a townhouse absolutely spic and span from top to bottom and outside too. Your place was so clean when I left it, I washed every wall, every window, every light, every blind and slat, every inch of that place plus the back lawn was mowed. The entrance was swept and the parking stalls were being swept when you came. Cupboards [were cleaned] inside and out, fridge, stove and dishwasher. You had absolutely no reason [not] to give me back my damage deposit of \$545.00 and pet deposit of \$545.00. Since I also paid to have the carpets cleaned for moving and everything was way better than when I moved in. Actually you can't deny that your place looked 100% perfect when I moved out. Then I deserve and want the \$1,190.00 plus interest from March 1, 2011 until the cheque is written and in my possession. Included you will find all the documentation regarding the dispute. Read it and follow instructions. It's up to you.

[Tenant name and address]

The Landlord said he was uncertain what he was supposed to do once the Tenant had filed her application for dispute resolution and decided to wait for the hearing at which time he alleged that he had a claim against the Tenant's deposits because he had incurred a loss of rental income due to the Tenant ending the fixed term tenancy early.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the tenancy ended on September 30, 2011 however, I find that as of the date of the hearing, the Tenant had not provided the Landlord with a forwarding address in writing for the purposes of returning the security deposit and pet damage deposit. Although the Tenant sent the Landlord a cover letter with her application for dispute resolution that had her mailing address, the subject line and content of the letter refer only to the reasons for the Tenant filing an application for dispute resolution. However, nowhere in that letter does the Tenant ask the Landlord to return the security deposit to her at the address she has provided. Instead, the address provided by the Tenant appears to be her address for service of evidence for the dispute resolution proceeding. Consequently, I find that the Landlord's obligation to return the security deposit and pet damage deposit did not arise until such time as he received the Tenant's written

instructions as to where he was supposed to send the Tenant's security deposit and pet damage deposit.

The Tenant confirmed at the hearing that the address on her application for dispute resolution is her forwarding address. Consequently, I find that as of the date of this decision, the Tenant has provided the Landlord with her forwarding address in writing for the purposes of s. 38(1) of the Act. As a further consequence, the Landlord now has 15 days to do one of the following:

- To obtain the Tenant's written consent to keep all or part of the security deposit and pet damage deposit;
- To return the Tenant's security deposit and pet damage deposit; or
- To file an application for dispute resolution to make a claim against the Tenant's security deposit and pet damage deposit.

If the Landlord fails to take one of these measures by February 7, 2012 at the latest, then the Tenant may reapply under s. 38(6) of the Act for the return of double the amount of her security deposit and pet damage deposit.

Conclusion

The Tenant's application is dismissed with leave to reapply. 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: January 23, 2012.

Residential Tenancy Branch