



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 the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double his security deposit. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 2, 2013. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The tenant moved into this shared accommodation with other tenants in the rental premises on April 1, 2012. The landlord testified that the tenant was actually a sub-tenant of the primary tenant(s) who had signed a residential tenancy agreement with the landlord for this rental space. However, the landlord also testified that the tenant paid the landlord \$350.00 in monthly rent and paid a \$175.00 security deposit directly to the landlord on April 1, 2012. He confirmed that he had provided the tenant with receipts for the tenant's first month's rent and his security deposit, copies of which were both entered into written evidence by the tenant.

The tenant vacated the rental unit on April 2, 2013. The landlord confirmed that the tenant handed him his forwarding address in writing on April 4, 2013.

The tenant applied for a monetary award of \$350.00, for the return of double his security deposit as he maintained that the landlord had failed to comply with the provisions of the *Act* (section 38) to return his security deposit within 15 days of being provided with his forwarding address in writing.

The landlord testified that he wanted to return the security deposit to the tenant in cash, as that was how it was paid to him and that is the usual practice in this portion of his community. The landlord testified that he tried on four separate occasions to return the tenant's security deposit to him at the address the tenant had provided to him. The landlord testified that no one answered the door on the first three occasions. On the fourth occasion, the person who answered the door said that the tenant did not live there. Subsequently, the landlord contacted the tenant by telephone and the tenant requested that the landlord meet him at a local fast food restaurant to return the security deposit. When the landlord refused to meet him there, the tenant somewhat reluctantly gave the landlord another address where the tenant was actually living. The landlord made arrangements to meet the tenant at that address. However, by the time the landlord met the tenant, the tenant had applied for dispute resolution and was no longer interested in obtaining only a return of his security deposit.

The tenant testified that the address he provided to the landlord is the mailing address he has used for the past 10 years. This is the same address identified in the tenant's application for dispute resolution. The tenant said that the landlord first contacted him about this matter after receiving a copy of the tenant's application for dispute resolution. The tenant said that the landlord first offered him the return of his \$175.00 security deposit to him on or about May 12, 2013, approximately one week after the landlord received his hearing package. By then, the tenant was interested in obtaining double his security deposit due to the landlord's failure to comply with the security deposit provisions of the *Act*.

Analysis

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 in writing, to either return the security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain that deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no

record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord confirmed that he has not obtained the tenant's written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

Although the landlord may very well be correct in his assertion that he tried to return the tenant's security deposit to him at the address the tenant provided to him. The landlord's interest in returning this deposit to the tenant in cash appears to have interfered with the landlord's compliance with the requirements of section 38 of the *Act* regarding the return of the tenant's security deposit. The *Act* does not specify that a security deposit can only be provided in the same method of payment as was originally conveyed to the landlord. The *Act* also allows for a range of methods for the return of the security deposit, the most secure of which would generally be by registered mail. Section 90 of the *Act* establishes that registered mail is deemed served on the fifth day after its mailing, whether or not the tenant has chosen to pick up that mail. The *Act* also allows a tenant to provide a forwarding address for mailing purposes that varies from the actual address where the tenant is residing. While I have no doubt that the landlord was well-intentioned in wanting to ensure that the tenant's security deposit was in fact received by the tenant, I find that the landlord's failure to employ methods of service delivery allowed under the *Act*, including returning the tenant's security deposit by registered mail, led to the landlord's contravention of section 38 of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount only. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to obtain a recovery of double his security deposit.

Item	Amount
Return of Security Deposit	\$175.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	175.00
Total Monetary Order	\$350.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 25, 2013

Residential Tenancy Branch

