



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

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

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and the landlord agreed he received it. However the landlord disputed receiving the tenant's forwarding address in writing and said he did not receive the evidence in time to prepare his case. I verified online that the evidence was served by registered mail on July 30, 2013 and picked up by the landlord on August 3, 2013 which is 5 days before this hearing and appears to comply with section 3.5 of the Rules of Procedure. However "days" is defined as excluding the first and last day so I find the evidence was served late on the respondent and this will be considered in my decision. I find the documents were served pursuant to section 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and to recover the filing fee for this application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. This was a very contentious hearing with the landlord denying much of what the tenant said. Both parties agreed that the tenant had paid a security deposit of \$600 in February 2012 and paid a monthly rent of \$1200. The tenant vacated on March 2, 2013 and said he returned the keys but agreed that he had kept one fob because he paid \$50 for this extra fob and the female landlord said she did not

want it. I note on the move-in report it states that one fob is given to the tenant and on the move out report dated March 2, 2013, it is noted as returned. The tenant's forwarding address is noted on the same report dated March 2, 2013 and the tenant said the female landlord wrote it in as he was already living at his new address. However, he states that the female landlord completed parts of the report later. I note he has not signed an agreement that anything be deducted from the security deposit. The male landlord who attended the hearing said his wife got the address by telephone only and wrote it in then.

In evidence are some text messages dated March 19 and 22, 2013 (relevant portions only noted here) in which the female landlord queries if the tenant has paid the hydro bill as she needs to return his deposit (on the 19th). The tenant advises on the 22nd March that he is serving her papers regarding his damage deposit and she replies that she has already mailed a cheque to his forwarding address although he has not replied re. his utility bill. The tenant replies advising of the obligation of the landlord to return the deposit within 15 days and that the utility bill does not affect this; he said he pays his bills. The female tenant replied saying she had not received a forwarding address in writing and the tenant replies saying she got it on the damage inspection. In evidence is a copy of a cheque for \$515.39 dated March 6, 2013 but the postmark on the envelope is March 25, 2013 and the tenant said that it was not received until then. A note was with it stating that the copy of the inspection report was enclosed, and the cleaning bill of \$60 and the hydro amount of \$24.61 were deducted. The tenant returned this cheque with the evidence and the landlord agreed they received it.

The landlord wanted to introduce evidence of damages but I advised him that he had to file his own application to claim damages against the tenant and this hearing was dealing with the issue of the security deposit under section 38.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The Residential Tenancy Act provides:

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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later 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 deposit or file an application to retain the deposit. 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 security deposit (section 38(6)).

There are significant issues of credibility in this hearing. It is undisputed that the tenant paid \$600 security deposit in February 2012 and that the landlord withheld some without permission of the tenant to pay for cleaning and a hydro bill but there is a difference of opinion about when the forwarding address was received and whether it was in writing. I find the evidence of the tenant more credible and prefer it to the evidence of the landlord that the tenant provided his forwarding address in writing on the condition inspection report done on March 2, 2013. I find his evidence supported by the fact that he did not have a copy of the condition inspection report until the landlord forwarded it with the cheque and the address is clearly on the report, also that the landlord never mentioned the forwarding address in writing by text messaging until the tenant advised he was bringing an application to claim double the deposit on March 22, 2013. I find also that she backdated the cheque for the balance of the security deposit although she did not mail it until March 22, 2013 as evidenced by the postmark on the envelope and this reflects on the credibility of the landlord's evidence. I find the tenant returned the landlord's cheque and the landlord received it so the security deposit amount remains at \$600 in the landlord's account.

While the evidence was technically received two days late by the landlord, I find that most of it was already in his possession such as the condition inspection report, the

cheque, the handwritten notes and text messages from the female landlord so that this did not take him by surprise. Also, the application was served in time and in it, the tenant clearly sets out his claim.

As advised in the hearing, the landlord has up to two years from the end of the tenancy to file their application for damages and I declined to hear his damage claims as he had not filed an application.

I find the tenant vacated the unit on March 2, 2013, provided his forwarding address in writing on that date and did not receive a partial refund cheque until March 25, 2013 in an envelope postmarked March 22, 2013. I find the tenant returned that cheque as he considered it not his legal entitlement. I find he is entitled to recover double his original security deposit.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover his filing fee for this Application.

Original deposit doubled (2x600)	1200.00
Filing fee	50.00
Monetary Order to Tenant	1250.00

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: August 08, 2013

Residential Tenancy Branch