



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 balance of the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

SERVICE

The landlord did not attend the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address. It was verified online that the Application was successfully delivered to the landlord and a witness statement was provided regarding service of the forwarding address. I find the documents were served pursuant to sections 88 and 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 balance of his security deposit according to section 38 of the Act?

Background and Evidence

The landlord did not attend the hearing although served with the Application/Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$387.50 on September 15, 2011 and agreed to rent the unit for \$775 a month. The tenant vacated the unit on May 31 2013 and provided his forwarding address on that date. The landlord refunded \$244.05 of his security deposit by cheque dated June 10, 2013 but retained the balance without permission. The tenant claims double the balance of his security deposit \$306.90 (\$153.45 x 2).

The landlord said she retained the deposit for the tenant had caused damage to the unit including replacing appliances without permission and damaging some new concrete steps. She had not filed an Application to claim against the deposit and I advised her in the hearing how to do this within the two year time limit specified in the Act.

In evidence is a copy of the lease, the refunded cheque and a witness statement. The landlord submitted no documents to dispute the claim and has not filed an Application to claim against the deposit.

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

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

(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.

I find the evidence of the tenant credible that he paid \$387.50 security deposit on September 15, 2011, served the landlord personally with his forwarding address in writing on May 31, 2013 and vacated on that date. I find the landlord refunded \$244.05 within the required 15 days but retained the balance of \$153.45 without permission. I find his evidence well supported by the documents he filed. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his

security deposit. I find the tenant entitled to recover double the balance of his security deposit.

Conclusion:

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

Retained security deposit (no interest 2011-13)	153.45
Double retained amount	153.45
Filing fee	50.00
Total monetary order to tenant	356.90

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: September 25, 2013

Residential Tenancy Branch

