



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 personally with his forwarding address. The landlord agreed he had received them as stated. 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 security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It was undisputed that the tenant paid a security deposit of \$700 and a pet damage deposit of \$400 in March 2010 and agreed to rent the unit for \$1425 a month. The tenant vacated the unit on August 31, 2013 and provided his forwarding address in writing by a note in a drawer of the unit together with the keys according to the instructions of the landlord. The landlord agreed these facts were correct but said he did not see the note until September 3, 2013 when he was cleaning the unit.

The tenant said he received a cheque for \$700 on September 19 but it was postdated to September 6, 2014; he also received a further cheque for \$350 postdated to September 21, 2014. Copies of both cheques were submitted as evidence. The landlord said he

did not realize that he had written the wrong date until he got the tenant's letter and he immediately sent a cheque for \$1000 dated October 18, 2013 to the tenant. The tenant has not cashed the cheque for \$1000 yet. The tenant said he gave no permission to retain any of the deposits.

The landlord submitted some evidence of alleged damages to the suite but said he had been discouraged from filing an Application as he had not completed a condition inspection report at the commencement of the tenancy. I advised him of the two year limitation period in the Act and told him that if he filed an Application, all the evidence of both parties would likely be considered.

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)).

I find the undisputed evidence is that the tenant paid a total of \$1000 for the security and pet damage deposits in March 2014 and provided the landlord with his forwarding address in writing on August 31, 2013, although the landlord may not have noticed it until September 3, 2013 when he was cleaning. I find that even if the post dated cheques the landlord sent on September 19 and 23 had been validly dated in 2013, they were refunded out of time according to section 38 as this was beyond the 15 day limit after the landlord received the tenant's forwarding address in writing. The tenant confirmed he had received a cheque for \$1000 from the landlord validly dated on October 18, 2013. The landlord stated he has not filed an Application to claim against the deposit. I find the tenant entitled to recover double his security deposit, less the amount he received by cheque on October 18, 2013. He should cash this cheque now.

Conclusion:

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

Original security and pet damage deposits	1000.00
Double the deposits per section 38	1000.00
Filing fee	50.00
Less amount refunded by cheque dated Oct. 18, 2013	-1000.00
Total monetary order to tenant	1050.00

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: October 24, 2013

Residential Tenancy Branch

