



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 by email with her forwarding address. The landlord agreed they 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. The tenant said she had paid a security deposit of \$412.50 in May 2010. The tenant vacated the unit on November 3, 2015 and had provided her new address by email on October 1, 2013 when she gave her Notice to End Tenancy. The landlord agreed these facts were correct. The landlord submitted many documents related to alleged damages the tenant cause but said they had mailed back \$287.50 of the deposit before November 15, 2013. The tenant agreed she received it but she has never cashed the cheque and she is concerned it may be stale dated now. She gave no permission to retain the balance of \$125. The landlord said they had made no application for dispute resolution.

The landlord thought their cheque might still be cashable but agreed to give the tenant another one if she returned the original cheque. The tenant agreed to do this. 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

(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 landlord returned \$287.50 within 15 days of the tenant vacating the unit but did not make an application to claim against the remaining \$125 and the tenant did not give permission to retain this.

Conclusion:

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

Original Deposit	412.50
Returned by landlord within 15 days	-287.50
Balance retained without permission	125.00
Twice balance retained per. Section 38	125.00
Filing fee	50.00
Total Monetary Order to Tenant	300.00

IN ADDITION TO THE PAYMENT OF THE MONETARY ORDER, I HEREBY ORDER THE LANDLORD to issue a new cheque for \$287.50 to the tenant when she returns the cheque dated in November 2013.

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: March 13, 2014

Residential Tenancy Branch

