



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

The tenant gave sworn testimony that he served the landlord by with the Application by registered mail. The landlord did not attend and the tenant was unable to provide proof of service such as the tracking number for the registered mail.

Issue(s) to be Decided:

Is the tenant 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

The landlord did not attend. The tenant was given opportunity to be heard, to present evidence and to make submissions. The tenant had provided no documentary evidence of service of a forwarding address on the landlord. He provided no evidence of the amount or payment of a security deposit. He also was unable to provide proof of service.

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 onus is on the applicant to prove on a balance of probabilities their claim.

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.*

I find the tenant was unable to satisfy the onus of proving his claim as he provided no evidence of service of his forwarding address as required by section 38(1) (b) above and provided no proof of payment of a security deposit. Furthermore, he was unable to provide proof of service of the Application/Notice of Hearing on the landlord as required by section 89 of the Act. As explained to the tenant in the hearing, according to the Principles of Natural Justice, a party must have notice of a claim against them.

Conclusion:

I dismiss this Application of the tenant and give him leave to reapply within the legislated time limits. I caution the tenant to provide proof of service of the Application and other relevant documents to the Residential Tenancy Branch for inclusion in his file for the next hearing.

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: April 03, 2014

Residential Tenancy Branch