



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RR 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;
- b) An Order for a refund of the last month's rent paid in advance; and
- c) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and the tenant provided evidence that she had served the landlord personally with the Application for Dispute Resolution; the landlord agreed he received it personally. She provided evidence that she gave her forwarding address in writing on June 11, 2013. 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 she is entitled to the return of double the security deposit according to section 38 of the Act and to a refund of one month's rent?

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 \$550 on April 17, 2012 together with her last month's rent in advance and agreed to rent the unit for \$1150 a month. She provided a copy of the cashed cheque for \$1700 as evidence. The tenant vacated the unit on May 11, 2013 after paying rent for May, 2012 and provided her forwarding address in writing on June 11, 2012. A copy is provided in evidence. The tenant's deposit or last month's rent has never been returned and she gave no permission to retain any of it.

The landlord said he had suffered financial setbacks and the building had been foreclosed. He agreed that he had not returned the tenant's security deposit and she did not give permission to retain it but he did not recall the details of the last month's rent but accepted the fact of the cancelled cheque in evidence. He said he did not agree with doubling the deposit and he was in bankruptcy.

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)) whether or not he agrees with the legislation.

I find the evidence of the tenant credible that she paid \$550 security deposit plus the last month's rent in advance on April 17, 2012; her evidence is well supported by the documents she filed. I find she gave her forwarding address in writing to the landlord on June 11, 2013. I find she gave no permission for the landlord to retain the deposit and has not received the refund of her security deposit. Based on the evidence in file and in the hearing, I find she also paid a last month's rent in advance and paid it again in May 2013 before vacating on May 11, 2013. I find she is entitled to a refund of overpaid rent and double her security deposit.

I find the landlord basically agreed with these facts. As discussed in the hearing, the tenant will consult the RTB website and follow the steps for enforcement of the monetary order and let the court decide the procedure concerning the landlord's financial situation.

Conclusion:

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

Original security deposit (no interest 2012-14)	550.00
Double security deposit	550.00
Refund of overpaid rent	1150.00
Filing fee	50.00
Total Monetary Order to tenant	2300.00

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: September 04, 2014

Residential Tenancy Branch

