



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BATTYE ENTERPRISES
and [tenant name suppressed to protect privacy]

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

Only the tenant attended the hearing and provided sworn evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and in writing with her forwarding address together with the keys and a friend as witness. It was verified online that delivery of the registered mail was successful on February 2, 2015. I find the landlord is 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

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$850 on May 2, 2013 and agreed to rent the unit for \$1700 a month on a fixed term to May 31, 2014. The tenant gave Notice on April 23, 2014 and vacated the unit on May 31, 2014 as agreed on his tenancy agreement. He provided his forwarding address in writing on June 3, 2014 and has been requesting the return of his security deposit with no communication from the landlord. The tenant's deposit has never been returned and he gave no permission to retain any of it.

In evidence is the tenancy agreement, a condition inspection report, copies of text messages and a condition inspection report done at move-in. 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)).

As discussed with the tenant in the hearing, a fixed term tenancy may not usually be ended until the end of the fixed term. However, section 44 applies in this case which states (in part) as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (ii) section 46 [landlord's notice: non-payment of rent];
- (iii) section 47 [landlord's notice: cause];

Based on section 44 above, I find the landlord ended the tenancy with the 10 day Notice to End Tenancy. I find the tenancy ended on January 12, 2015. I find the evidence of the tenant credible that they paid \$447.50 security deposit on August 15, 2014, and gave the landlord their forwarding address in writing together with the keys on January 12, 2015 when they vacated in response to the landlord's notice. Their oral evidence is well supported by the documentary evidence. I find they gave no permission for the landlord to retain the deposit and have not received the refund of their security deposit. I find the tenant entitled to recover double their security deposit.

Conclusion:

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

Security Deposit (no interest 2013-14)	447.10
Double deposit	447.10
Filing fee (none paid)	0.00
Total Monetary Order to Tenant	894.20

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: February 24, 2015

Residential Tenancy Branch

