



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 landlord did not attend. The tenant provided sworn evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and by putting it in his mailbox with his forwarding address. I was unable to verify delivery online as the tenant could not provide a tracking number, although he did provide the receipt for the registered mail. I find the landlord is deemed to be 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 \$450 in May 2014 and agreed to rent the unit for \$900 a month. The tenant vacated the unit on August 29, 2014 and provided his forwarding address in writing on September 25, 2014. The tenant's deposit has never been returned and he gave no permission to retain any of it. He said the landlord gave him no opportunity to do a Condition Inspection Report at move-out but withheld the whole deposit, saying it was for carpet cleaning.

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 sworn evidence of the tenant credible that he paid \$450 security deposit in May, 2004, vacated on August 29, 2014 and served the landlord with his forwarding address in writing by putting it in his mailbox on September 25, 2014. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit. The tenant said to his knowledge the landlord has not filed an Application to claim against the deposit. I find the tenant entitled to recover double his security deposit.

Conclusion:

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

Original Deposit (no interest 2014)	450.00
Double deposit	450.00
Filing fee	50.00
Total Monetary Order to Tenant	950.00

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: March 18, 2015

Residential Tenancy Branch

