



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.

Preliminary Issue of Service:

Both parties attended the hearing and the landlord agreed they received the Application for Dispute Resolution by registered mail; the tenant said he had served the landlord with his forwarding address by giving it to another tenant downstairs who said he had delivered it. The landlord said he never received a forwarding address until he received the Application for Dispute Resolution. I find insufficient evidence that the landlord ever received the tenant's forwarding address in writing; I find that giving an address to someone to pass it on is not sufficient service under sections 88 and 89 of the Act.

Analysis:

The *Residential Tenancy Act* provides:

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 evidence of the tenant credible that he paid \$525 security deposit in 2012 which has not been returned to him. However, I find insufficient evidence that he ever served the landlord with his forwarding address in writing as required by section 38 of the Act. In the hearing, the tenant confirmed to the landlord that the address on this Application is his forwarding address and he would like his security deposit returned. The landlord said they intended to file an Application as there was unpaid rent as well as damages. **The landlord was told that he has 15 days from today, April 23, 2015 to conform to the provisions of section 38 of the Act and either return the deposit or file an Application to claim against it.**

Conclusion:

I dismiss this application of the tenant due to insufficient proof of legal service of his forwarding address and give him leave to reapply after the expiry of 15 days. I find the tenant not entitled to recover the filing fee for this application due to lack of success.

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 23, 2015

Residential Tenancy Branch

