



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 provided sworn evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address at the door. The landlord did not attend. It was verified online that the postal service attempted delivery of the Application/Notice of Hearing on March 5, 2015 and after leaving several notices it was returned to the sender as the recipient did not claim it. I find the landlord is deemed to be served pursuant to sections 88, 89 and 90 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 with interpreters 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 \$1000 to the landlord in May 2013 (receipt provided) and agreed to rent the unit for \$2000 a month. The tenant vacated the unit on January 21, 2015 and provided his forwarding address in writing on February 9, 2015. The tenant's deposit has never been returned and he gave no permission to retain any of it.

The tenancy agreement has noted a different landlord but the tenant said it was his current landlord named in the Application. He provided evidence of rent receipts from the named landlord dating from August 1, 2014 and also of a Notice to End Tenancy

signed by this named landlord on November 16, 2014. Much of the documentary evidence is in another language but it is translated by a qualified translator whose identity and qualifications are provided in evidence. There is no evidence that the landlord has filed an Application to claim against the deposit.

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)).

I find the evidence of the tenant credible that he paid \$1000 security deposit in May 2013 as it is supported by receipts, that he served the landlord personally with his forwarding address in writing on February 9, 2015 and vacated on January 31, 2015. I

find he gave no permission for the landlord to retain the deposit and has not received the refund of his security 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 2013-15)	1000.00
Double deposit	1000.00
Filing fee	50.00
Total Monetary Order to tenant	2050.00

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: May 13, 2015

Residential Tenancy Branch

