



Dispute Resolution Services

Page: 1

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.

SERVICE

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address. The landlord agreed she had received them as stated. 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 he is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The landlord confirmed that the named landlord on the Application is her property manager. The tenant said he had paid a security deposit of \$305 on June 16, 2014 as stated on the lease and agreed to rent the unit for \$610 a month. The tenant gave Notice to End his tenancy effective January 31, 2015 and vacated the unit on January 15, 2015. He provided his forwarding address in writing on January 31, 2015. He received \$210 of his security deposit back by cheque dated February 13, 2015.

The landlord agreed these facts were correct. She said that the tenant's lease required him to clean the carpets. He did not clean the carpets so \$95 of his deposit was withheld for that expense. The tenant said he did not agree that any of his deposit should be retained. The landlord pointed to the notes in evidence from the property

manager showing that the \$210 was mailed on February 13, 2015 which is within the 15 days contemplated by section 38 of the Act for return of the deposit to avoid the doubling provision. She had not filed an Application to claim against the deposit and I advised her in the hearing that she could file an Application to claim for damages within the two year time limit specified in the Act.

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)).

The evidence of the tenant is not disputed, that he paid \$305 security deposit on June 16, 2014, served the landlord personally with his forwarding address in writing on

January 31, 2015 and vacated on January 15, 2015. I find he gave no permission for the landlord to retain the deposit and the landlord has not made an Application to claim against the deposit.

I find the landlord refunded \$210 of his security deposit within 15 days as specified in section 38 of the Act by mailing the cheque on February 13, 2015. However, all of the security deposit was not refunded so, as set out in Residential Policy Guideline 17, I find he is entitled to the refund of double his entire deposit less the amount returned by the landlord. As set out in this Policy Guideline also, I find that a tenancy agreement cannot provide that the landlord may keep part of the deposit.

Conclusion:

I find the tenant entitled to a monetary order as calculated below. Filing fees were not involved.

Original deposit (no interest 2014-15)	305.00
Double deposit	305.00
Less amount refunded	-210.00
Total Monetary Order to Tenant	400.00

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 14, 2015

Residential Tenancy Branch

