



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 attended the hearing and left the conference briefly to obtain tracking information for registered mail. Then the landlord joined the conference and agreed he had been served with the Application for Dispute Resolution by registered mail. 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 she is entitled to the return of double the security deposit according to section 38 of the Act and to recover filing fees for this application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$460 in October 2013 (receipt provided) and agreed to rent the unit for \$920 a month. Later, she agreed the landlord could deduct \$40 from the deposit for rent owed. The tenant vacated the unit on January 31, 2015 and provided her forwarding address in writing on the Condition Inspection Report on January 31, 2015. The landlord agreed these facts were correct. The tenant's deposit has never been returned and she gave no permission to retain any of it.

The landlord said he retained the deposit for the tenant had caused damage to the unit. He said he had not made an Application to claim against the deposit. I advised him in

the hearing that he could do this within the two year time limit specified in the Act. However, he seemed to think that this would suspend this decision but I advised him that the tenant was entitled to her decision and a monetary order resulting from this proceeding.

In evidence is the tenancy agreement, the condition inspection report, a receipt for the security deposit and proof of payment of the last month's rent.

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 she paid \$460 security deposit on October 2013, vacated on January 31, 2015 and served the landlord personally with her forwarding address in writing on January 31, 2015 by putting it on the condition inspection report at move-out; her evidence is supported by the documents in evidence. I find she gave permission for the landlord to retain only \$40 of the deposit and has not received the refund of the remainder of her security deposit. The landlord stated he has not filed an Application to claim against the deposit. I find the tenant entitled to recover double her 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 security deposit (less agreed deduction)	420.00
Double security deposit	420.00
Filing fee	50.00
Total Monetary Order to Tenant	890.00

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: June 10, 2015

Residential Tenancy Branch

