



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 hearing. The tenant provided sworn evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and personally with their forwarding address on January 12, 2015 when they vacated. It was verified online that the registered mail was available for pickup from March 9, 2015 and after several notices were left and the landlord failed to pick it up, it was returned to the sender. I find the Application is deemed to be served pursuant to section 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 they are entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Only the tenants attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant provided evidence that they had paid a security deposit of \$650 in February 2012 (evidence provided) and agreed to rent the unit for \$1300 a month. The tenant vacated the unit on February 1, 2015 after receiving a section 49 Notice to End Tenancy; they said the landlord had given them a free month's rent as required by section 50 of the Act. They provided their forwarding address in writing on January 12, 2015 (letter in evidence). The tenants' deposit has never been returned and they gave no permission to retain any of it.

There is no evidence that the landlord 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.

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 they paid \$650 security deposit in February 2012, served the landlord with their forwarding address in writing on January 12, 2015 and vacated on February 1, 2015. I find they gave no permission for the landlord to retain the deposit and they have not received the refund of the security deposit. There is no record the landlord filed an Application to claim against the deposit. I find the tenant entitled to recover double the security deposit in accordance with section 38 of the Act.

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 2012-15)	650.00
Double deposit	650.00
Filing fee	50.00
Total Monetary Order to tenant	1350.00

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 18, 2015

Residential Tenancy Branch

