



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 applicant tenant did not attend the hearing. The landlord stated he was served with the Application 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?

Background and Evidence

The tenant/applicant did not attend the hearing. After waiting 10 minutes, the hearing was conducted in her absence. The landlord agreed that the tenant paid a security deposit of \$1450 in 2006 and her rent was \$1550 per month. He said he has a significant damage claim and he provided some documentary evidence. I advised him that he must file an Application to claim for damages and/or unpaid rent.

He said the tenant vacated the unit and he regained possession on May 1, 2015 but he has never received the tenant's forwarding address in writing. The tenant provided no documentary proof of service of the forwarding address. The tenant's deposit has never been returned.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

On preponderance of the relevant evidence for this matter;

Section 38(1) of the Act provides as follows (emphasis mine)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days** after the later of

38(1)(a) the date the tenancy ends, and

38(1) (b) the date the landlord receives the tenant's forwarding address in writing, the
landlord **must** do one of the following:

38(1)(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;

38(1) (d) file an application for dispute resolution to make a claim against the security
deposit or pet damage deposit.

Based on the weight of the evidence, I find the tenant's application is premature as
there is insufficient evidence that she ever provided her forwarding address in writing to
the landlord. Her application is dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed with leave to reapply. I find her not entitled to
recover filing fees for this application.

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: September 03, 2015

Residential Tenancy Branch

