



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Only the tenant attended the hearing and provided sworn evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and with his forwarding address in writing. It was verified online that delivery of the Application was attempted but after Notices were left and it was unclaimed by the landlord, it was returned. I find the Application is deemed to be received on November 4, 2015 pursuant to sections 89 and 90 of the Act. The tenant applies pursuant to section 38 of the *Residential Tenancy Act* (the Act) for an Order to return double the security deposit pursuant to Section 38 and to recover the filing fee for this application.

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 attended and was given opportunity to be heard, to present evidence and make submissions. The tenant said the tenancy commenced October 2014 as a month to month tenancy, he paid a security deposit of \$400 and agreed to rent the unit for \$800 a month. The tenant vacated the unit on September 30, 2015 and provided his forwarding address in writing in mid September 2015. The tenant's deposit has never been returned and he gave no permission to retain any of it. He said he has received no Application from the landlord to claim against it.

In evidence are emails between the parties in which the landlord says she can't afford to return the security deposit in October and states there were damages.

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 \$400 security deposit in September 2014, served the landlord with his forwarding address in mid September 2015 and vacated on September, 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 2014-15)	400.00
Double deposit (section 38)	400.00
Filing fees	50.00
Total Monetary Order to Tenant	850.00

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: January 21, 2016

Residential Tenancy Branch

