



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 this hearing and provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address at the time of moving out. However, the landlord denied receiving the forwarding address so the tenant sent it again, this time by registered mail. It was verified online that the forwarding address was mailed on July 24, 2015, delivery was attempted on July 27, 2015 and notices were left. The landlord picked it up on August 10, 2015. The Application was mailed August 28, 2015, delivery was attempted and notices were left but the landlord failed to claim it. I find the forwarding address is deemed to have been received on July 29, 2015 (5 days after mailing) and the Application deemed to have been received on September 2, 2015 pursuant to sections 89 and 90 of the Act for the purposes of this hearing. The tenant requests pursuant to 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 they are 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 he had paid a security deposit of \$700 on in September 2013 and agreed to rent the unit for \$1400 a month. The tenant vacated the unit on August 1, 2014 after giving the requisite one month notice. He said they provided their forwarding address in writing on move-out but the landlord refused to acknowledge this so they sent their forwarding address in writing by registered mail in

July 2015 as they were aware that a year was almost up since they vacated and they did not want to have the landlord keep their deposit pursuant to section 39 of the Act.

The tenant states their deposit has never been returned and they gave no permission to retain any of it. They are not aware of the landlord filing an Application to claim against it. They request double their deposit refunded pursuant to section 38 of 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)).

I find the evidence of the tenant credible that they paid \$700 security deposit on October 1, 2013. The tenancy agreement in evidence supports his testimony. I find the tenant's evidence credible that they served the landlord personally with their forwarding address in writing on August 1, 2014 and vacated on August 1, 2014. However, I also find the landlord is deemed to be served with their forwarding address by registered mail on July 29, 2015. I find the tenants gave no permission for the landlord to retain the deposit and they have not received the refund of their security deposit. I find the tenants entitled to recover double their 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	700.00
Double deposit (no interest 2013-16)	700.00
Filing fee	50.00
Monetary Order to Tenant	1450.00

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: February 11, 2016

Residential Tenancy Branch

