



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RPP MNDC FF

Introduction

Both parties attended the hearing and the tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail. I find the Application was served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The 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;
- b) To return her personal property (post dated cheques) pursuant to section 65;
To obtain a monetary order for cancellation fees as they were not returned;
and to recover the filing fee for this application.

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 her postdated cheques and cancellation fees incurred because they were not returned?

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 \$1450 on August 5, 2015 (cheque copy provided) and agreed to rent the unit for \$2850 a month commencing August 15, 2015. However, she said the home was not ready for occupancy due to ongoing renovations and the landlord also raised the rent to \$2950 a month. The tenant never moved in. The tenant said she gave notice of not taking the home, asking for the return of her security deposit and giving her forwarding address by email. The tenant's deposit has never been returned and she gave no permission to retain any of it.

The landlord did not dispute the statements of the tenant but pointed out that the emails in evidence were sent to the craigslist posting and not to the landlord. They never checked craigslist as they assumed the home was rented. They never got the tenant's forwarding address either orally or in writing. The landlord said they have all the post

dated cheques except the one paid at commencement of the tenancy but had no address for their return. They said they should not be responsible to pay twice the deposit under section 38 or for cancellation fees for the tenant's cheques as she never provided her forwarding address in writing so they could return them.

In evidence are photographs to illustrate why the tenant did not take the home, a statement of events, a copy of the cheque for the security deposit, and some emails all addressed to a craigslist account plus the advertisement as posted there.

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 weight of the evidence is that this application is premature as the tenant never served the landlord with her forwarding address in writing as required by section 38(b) above. I dismiss this portion of her application and give her leave to reapply after 15 days when she has served the landlord with her forwarding address in writing. I also find that the landlord was provided no address to return her postdated cheques so I dismiss this portion of her application.

Conclusion:

I dismiss the application of the tenant as it is premature. I give her leave to reapply after she has served the landlord with her forwarding address in writing if the landlord does not return her deposit and cheques or make an Application to claim against her deposit.

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: March 30, 2016

Residential Tenancy Branch