



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

The landlord did not attend the hearing. The tenants provided evidence that they had served the landlord with the Application for Dispute Resolution personally. They included a disc with photographs of the landlord receiving the Application on March 9, 2016. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies 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.

Issue(s) to be Decided:

Have the tenants 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 and were given opportunity to be heard, to present evidence and make submissions. They are two tenants who separately rented rooms from the landlord commencing January 9, 2016. The rent was \$750 each and the landlord required each of them to pay \$750 security deposit. The tenants made a joint Application to recover their deposits.

They said they had given notice on January 16, 2016 that they intended to vacate on January 30, 2016 as they had training obligations. They vacated on January 30, 2016 and gave the landlord their forwarding address in writing on February 14, 2016 when they returned to the city. They gave no permission to retain any of their deposits. They submitted some evidence from other tenants showing new tenants moved into their units in early February. On February 17, 2016, there is an email from the landlord saying he will refund the deposits to close this matter. This is in response to an email from the tenants requesting the full refund of \$1500. The tenants state they received no refunds.

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 both tenants credible that they each paid \$750 security deposit in January 2016, served the landlord personally with their forwarding addresses in writing on February 14, 2016 and vacated on January 30, 2016. Their credibility is supported by the emails and disc in evidence. I find they gave no permission for the landlord to retain the deposit and they have not received the refund of their security deposits. I find

no record of the landlord filing an Application to claim against the deposits. I find the tenants entitled to recover double their security deposits. As each tenant had a separate tenancy but joined in this Application, I will grant individual monetary orders to them.

Conclusion:

I find each tenant entitled to a monetary order as calculated below and to recover half of the filing fee for this joint application.

Security Deposit	750.00
Double original deposit	750.00
Filing fee	50.00
Total Monetary Order to <u>each</u> tenant	1550.00

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: July 06, 2016

Residential Tenancy Branch