



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAZAWEST SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF

Introduction

Only the tenant attended the hearing and gave sworn testimony that he served the landlord with the Application for Dispute Resolution by registered mail and by email with his forwarding address on November 24, 2015 when he also served his Notice to End his tenancy. 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:

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 the hearing although I find the landlord was successfully served with the Application/Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$487.50 in December 2014 and agreed to rent the unit for \$975 a month. The tenant vacated the unit in December 2015 after paying rent for December. He provided his forwarding address in writing on November 24, 2015 when he gave his Notice to End Tenancy. In evidence is a copy of his Notice to End his Tenancy with his forwarding address and a request to return the security deposit. The tenant said he got a cheque in the mail for \$487.50 about two weeks ago but he destroyed it as it is long past the time for its receipt according to section 38 of the Act. He gave no permission to retain any of his deposit.

In evidence are several emails between the parties, one dated February 5, 2016 from the landlord saying that the accounting department told him they mailed the cheque a

few days ago. On February 3, 2016 the tenant emailed and said he had wanted to pick up the cheque but could get no answer on the landlord's telephone.

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

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Analysis:

Section 38 of the Act has specific provisions and timelines for dealing with the tenant's security deposit.

On preponderance of the relevant evidence for this matter, I find;

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.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of the later of the tenant vacating and receiving the tenant's forwarding address in writing and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6) (a) may not make a claim against the security deposit or any pet damage deposit, and

38(6) (b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$487.50 and was obligated under Section 38 to return this amount if they determined not to seek its retention through Dispute Resolution. If they sent it a few weeks ago, they are out of time and I find the tenant destroyed the cheque as it was insufficient to comply with section 38 of the Act. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$975.00 and is further entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$1075.00**.

Conclusion

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1075.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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: August 16, 2016

Residential Tenancy Branch