



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 gave sworn testimony that he served the Application/Notice of Hearing on March 29, 2016 by registered mail and his evidence on July 21, 2016 also by registered mail. 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 a refund of a deposit for paint; 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 and to the refund of a deposit for paint?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said he had entered a tenancy agreement to commence March 25, 2016 for a rent of \$1700 a month and paid a security deposit of \$850 on February 10, 2016. He said the landlord said the day before he was to move in that the unit was not ready and they had some disputes about the move-in date and the availability of an elevator. He said the landlord wanted an additional \$1,000 paint deposit which the tenant refused and this was part of the dispute. He never paid the paint deposit. The landlord still did not have the unit ready by March 31, 2016 so the tenant decided not to move in. He did not provide his forwarding address in writing requesting the return of his security deposit. He said the landlord knew his address and saw it on his driver's license. The tenant's deposit has never been returned and he gave no permission to retain any of it.

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 he paid \$850 security deposit on February 10, 2016 but I find he never served the landlord with his forwarding address in writing and requesting his security deposit be refunded. Based on the provisions of section 38(1) (b) (c) above, I find the tenant's application is premature. I find he never paid a paint deposit so he is not requesting a refund of this.

Conclusion:

I dismiss the application of the tenant as it is premature. I give him leave to reapply after he has complied with section 38(1) (b) (c) by serving the landlord with his forwarding address in writing and giving him 15 days to return the 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: August 10, 2016

Residential Tenancy Branch