



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 for Dispute Resolution personally and his forwarding address by putting it on the landlord's door after the landlord refused to accept it. 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 an Order to return double the security deposit pursuant to Section 38

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 the landlord was 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 \$1150 on March 4, 2014 (receipt provided) and agreed to rent the unit for \$2300 a month on a fixed term lease expiring on February 28, 2016. The tenant vacated the unit on January 31, 2016 and provided his forwarding address in writing on March 1, 2016. The tenant's deposit has never been returned and he gave no permission to retain any of it.

In evidence is a receipt for the security deposit and the tenancy agreement. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

On preponderance of the relevant evidence for this matter;

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 receiving the tenant's forwarding address in writing on March 1, 2016 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 \$1150 and was obligated under Section 38 to return this amount if they determined not to seek its retention through Dispute Resolution. 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 \$2300.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$2300.00** (enclosed). 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 10, 2016

Residential Tenancy Branch