



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 provided sworn and documentary evidence that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by registered mail. The records show it was available for pickup, notices were left but the landlord failed to pick it up by April 6, 2016. Pursuant to section 90 of the *Residential Tenancy Act* (the Act) I find it is deemed to be served on the landlord on the fifth day after it is mailed for the purposes of this hearing. The tenant applies pursuant to 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 she 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 is deemed to be served with the Application/Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid rent of \$700 and a security deposit of \$350 to the head tenant who is named as the landlord in this application. In a previous decision, she was awarded a refund of one month's rent but her application for the refund of her security deposit was found to be premature. At that time, she had not provided her forwarding address in writing.

She vacated on October 1, 2015 and served her forwarding address in writing by a lawyer's letter on January 19, 2016 through registered mail with a request to refund her security deposit. The tenant's deposit has never been returned and she 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

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 January 19, 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 \$350.00 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 \$700.00 and is further entitled to recovery of the 100.00 filing fee for a total entitlement of **\$800.00**.

Conclusion

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$800**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 11, 2016

Residential Tenancy Branch