



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution and with his forwarding address by registered mail. The landlord confirmed receipt. 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

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$500 on September 1, 2014 and agreed to rent the unit for \$1150 a month which was increased to \$1180 a month. The tenant vacated the unit on March 31, 2016 and provided his forwarding address in writing by registered mail on May 16, 2016. The landlord agreed these facts were correct. The landlord said he is in another country on business much of the time but he sent a certified cheque to the tenant for \$650 and the tenant received it on June 25, 2016. He said he was returning the original security deposit, plus \$100 for the tenant's trouble and \$50 for his filing fee.

The tenant said he incurred additional expenses as he had to spend many hours obtaining and preparing the Application and filing and serving evidence. I explained the provisions of section 72 of the Act to him.

In evidence are registered mail receipts, the tenancy agreement and the letter with the forwarding address. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

As explained to the parties in the hearing, section 38 of the Act deals with security deposits. It is specific in timing and does not allow extensions in dealing with the deposit due to the landlord's circumstances such as business out of the country.

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 October 02, 2014 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.

I find the tenant entitled to a refund of double his security deposit as the landlord did not return it within the 15 days allowed by the Act and did not make an Application to claim against it. However, I find the landlord has refunded \$650 so this amount will be deducted from the doubled security deposit.

I find section 72 of the Act limits compensation for the process of the Application to recovery of the filing fee. I find the tenant is entitled to recover the \$100 filing fee.

Conclusion:

The tenant's application is granted. **I grant** the tenant a Monetary Order under Section 67 of the Act as calculated below and find him entitled to recover his filing fee. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Double original security deposit (\$500x2): no interest 2014-16	1000.00
Filing fee	100.00
Less amount paid by landlord	-650.00
Monetary Order for balance owed to tenant	450.00

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: August 16, 2016

Residential Tenancy Branch