



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 by registered mail and also given his forwarding address on November 4, 2016. The landlord agreed he had received them as stated. 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 the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

Preliminary Issue:

The tenant requested the dispute address to be amended to show that it was the basement suite he occupied. The landlord had no objection to the change so the dispute address was amended as requested.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of 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. Both parties recalled the tenancy commenced about one and half years ago, the tenant paid a security deposit of \$425 and rent was \$850 a month. The tenant vacated the unit on October 31, 2016 and provided his forwarding address in writing on November 4, 2016. The landlord agreed these facts were correct. The tenant's deposit has never been returned and he gave no permission to retain any of it.

The landlord submitted two invoices for cleaning the unit and the tenant said the landlord had told him he was keeping the deposit for the cleaning costs. The landlord had not filed an Application to claim against the deposit. I advised both parties of the provisions of section 38 which provides that a landlord must return the deposit within 15 days of the later of the tenant

vacating and giving a forwarding address in writing. If the landlord does not follow this provision, section 38 provides that the tenant receives double the deposit refunded. The parties indicated that they would be prepared to settle the matter between them as the tenant did not want twice his deposit. They decided to settle on the following terms and conditions:

Settlement Agreement:

- 1. The tenant will receive a monetary order for \$525 (the security deposit of \$425 plus \$100 filing fee). He waives the doubling of the deposit.**
- 2. This agreement settles all matters between the parties in respect to this tenancy so the landlord no longer retains the right to apply for further damages from the tenant.**

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

Analysis:

Pursuant to the above noted agreement, I find the tenant entitled to a monetary order for \$525. I note the landlord in the spirit of the settlement said he was sending him a cheque right away.

Conclusion:

I find the tenant entitled to a monetary order for \$525 which includes the filing fee.

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: January 26, 2017

Residential Tenancy Branch