



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

The tenants and the brother of the landlord attended the hearing and gave sworn testimony. The tenant provided evidence that he had served the landlord with the Application for Dispute Resolution and with his forwarding address 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
- b) To recover the filing fee for this application.

Preliminary Issue:

The landlord's brother requested an adjournment as the landlord is out of the country. He said his brother had invoices and things he would submit. I disallowed the adjournment pursuant to section 7.9 of the Residential Tenancy Branch Rules of Procedure for the following reasons. As this is a hearing by teleconference, the landlord could have attended the hearing by calling in from another country. An adjournment would not likely result in a resolution and would unfairly prejudice the tenant as they have waited for a result on their security deposit for a considerable time already. As explained to the landlord's brother, this is a hearing to recover the tenant's security deposit and the landlord had only 15 days to deal with it. This means he should have dealt with it by November 30, 2016 so can no longer claim against the deposit pursuant to section 38 of the Act. As the landlord did not file an Application to claim for damages, his claim and invoices would not be considered on the tenant's application for refund of the security deposit. The landlord is advised that he may file for damages in his own Application within the legislated time limits.

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

The tenants attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The landlord's brother attended as an observer. The tenant said they had paid a security deposit of \$625 on July 15, 2015 (bank withdrawal receipt provided) and agreed to rent the unit for \$1250 a month. The tenant vacated the unit on October 20, 2016 and provided their forwarding address in writing on November 15, 2016 by registered mail. The tenants' deposit has never been returned and they 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 they paid \$625 security deposit on July 15, 2015, served the landlord by registered mail with their forwarding address in writing on November 15, 2016 and vacated on October 20, 2016. I find they gave no permission for the landlord to retain the deposit and have not received the refund of their security deposit. I find the landlord has not filed an Application to claim against the deposit. I find the tenant entitled to recover double the security deposit.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original security deposit (no interest 2015-16)	625.00
Double security deposit	625.00
Filing fee	100.00
Total Monetary Order to Tenant	1350.00

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: February 02, 2017

Residential Tenancy Branch