



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Only the tenants attended and gave sworn testimony. They provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and in writing by email with their forwarding address. A receipt was in evidence. Pursuant to my authority under section 71 of the Act, I find service by email sufficient for the forwarding address in this case as I note the parties' communication was often by email. I find the Application was served pursuant to section 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.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Only the tenants attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said that the Application/Notice of Hearing which was sent by registered mail was refused by the landlord. I find the Application is deemed to be received pursuant to section 90 of the Act. The tenant said they had paid a security deposit of \$600 in August 2017 and agreed to rent the unit for \$1500 a month in high season and \$1200 in low season. The tenant vacated the unit on December 17, 2016 and provided their forwarding address in writing by email the same day. The landlord responded by email on December 30, 2016 listing damages and amounts she had withheld. The tenants' deposit has never been returned and they gave no permission to retain any of it.

They said the landlord to their knowledge had not filed an Application to claim against the deposit. I advised them in the hearing that she might make a claim for damages within the two year time limit specified in the Act. They regretted that she had not attended the hearing as they might have settled the matter.

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 tenants credible that they paid \$600 security deposit in August 2016, served the landlord in writing by email with their forwarding address on December 17, 2016 and vacated on December 17, 2016. I find they gave no permission for the landlord to retain the deposit and have not received the refund of the security deposit. I find they received a \$22 interac transfer but the landlord cancelled this. I find the tenants entitled to recover double the security deposit. I find them not entitled to recover compensation for registered mail as section 72 limits recovery of costs for the process of Application to the filing fee.

Conclusion:

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

Original security deposit	600.00
Deposit doubled	600.00
Filing fee	100.00
Total Monetary Order to Tenants	1300.00

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: March 09, 2017

Residential Tenancy Branch