



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

The landlord did not attend the hearing. The tenant attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and personally with their forwarding address on November 28, 2016 when the condition inspection was done. The tenant said the landlord refused to claim any of the registered documents sent. I find the documents were served pursuant to sections 88 and 89 and 90 of the Act for the purposes of this hearing. I find the landlord is deemed to be served pursuant to section 90. 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 tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$625 in 2012 (noted on tenancy agreement) and agreed to rent the unit for \$1250 a month. The tenant vacated the unit on November 26, 2016 and provided their forwarding address in writing on November 28, 2016 when they did the move out report with the landlord. The tenant said they agreed the landlord could keep \$30 of the deposit because they had damaged some blinds. The landlord returned \$120 of the deposit together with a damage statement with which the tenant does not agree. The balance of the tenant's deposit has never been returned although they only gave permission to retain \$30 of it.

The tenant said the landlord has filed an Application to claim damages and I advised her in the hearing that the landlord might choose to do this within the two year time limit specified in the Act.

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 in 2012, served the landlord personally with their forwarding address in writing on November 28, 2016 and vacated on November 26, 2016. I find they gave permission for the landlord to retain only \$30 of the deposit but only received \$120 refund on December 16, 2016 by cheque which they cashed. They have not received the balance of the refund of the security deposit. I find the tenant entitled to recover double the deposit of \$595 as they had given no permission to retain this amount. The check remitted by the landlord will be deducted from the total amount.

Conclusion:

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

Original deposit (no interest 2012-17)	625.00
Less retained amount as agreed	-30.00
Balance of deposit	595.00
Double balance as per section 38	595.00
Filing fee	100.00
Less amount sent by cheque	-120.00
Total Monetary Order to Tenant	1170.00

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 15, 2017

Residential Tenancy Branch