



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDC FF

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution personally and with their forwarding address. The landlord agreed they 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 double the security deposit pursuant to Section 38;
- b) To recover other monies that were awarded in a previous arbitration;
- c) To recover monies agreed to be paid by the landlord in a promissory note; and
- d) 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 and to recover other compensation which the landlord agreed to pay? Are they entitled to recover their filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The background to the tenancy was explained. The tenancy commenced October 2009 and a security deposit of \$475 was paid. Rent was \$950 a month. The home had problems and the tenants had a hearing on June 15, 2016 and were awarded \$1550 in compensation including the filing fee. The tenants said the landlord has never paid this amount.

The tenants said they had been served a 2 month Notice to End Tenancy without the second page of the Notice attached. When they got a copy of it later, it said the landlord was going to demolish or renovate the unit in a manner that required the home to be vacant. The tenants said the landlord just re-rented the property and claim compensation of two months rent pursuant to section 51 of the Act. The landlord said there was a sewer problem which he discovered prevented him from demolishing the house as planned so he re-rented it. As a result of the hearing on June 15, 2016, the Notice was found to be of no effect and the tenancy continued.

On June 21, 2016, the parties entered into an agreement wherein the tenants agreed to move out on July 31, 2016 and the landlord agreed to pay \$3,000 for moving compensation including

the deposit. It states he would pay this by July 1, 2016. The parties agree that it has never been paid. The landlord said there were damages and he has filed an Application to claim against the tenants.

The tenants vacated on August 8, 2016 and provided their forwarding address in writing on August 12, 2016. They gave no permission to retain any of their security deposit and request it be doubled pursuant to section 38 of the Act. The landlord filed an Application on March 21, 2017.

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 he paid \$475 security deposit in October 2009, served the landlord personally with their forwarding address in writing on August 12, 2016 and vacated on August 8, 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 the landlord agreed with these facts. Although the landlord filed an Application, I find it was not filed until March 2017 which is well beyond the 15 day limit set out in section 38. I find the tenant entitled to recover double their security deposit.

As the security deposit was part of the \$3,000 compensation promised, I find the landlord had promised to pay them an additional \$2525 in moving expense compensation. The promissory note in evidence supports the testimony and the landlord did not disagree that this had been signed and promised. I find the tenants entitled to recover \$2525 plus double the deposit.

In respect to their claim under section 51 for double a month's rent, I find the previous hearing found the Notice was of no effect, null and void due to the missing second page reason and the tenancy was continued. Therefore, I find the tenants not entitled to recover section 51 compensation for a null and void notice that did not end their tenancy. I dismiss this portion of their claim.

In respect to the \$1550 compensation awarded in the previous hearing, I find the arbitrator gave them a monetary order which they could or still can enforce. I decline to issue a second monetary order for amounts that have already been awarded as this would be a duplicate award. I dismiss this portion of their claim.

Conclusion:

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

Original deposit	475.00
Doubling pursuant to section 38	475.00
Remainder of compensation per promissory note	2525.00
Filing fee	100.00
Total Monetary Order to Tenants	3575.00

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 23, 2017

Residential Tenancy Branch

