



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 they had served the landlord with the Application for Dispute Resolution by courier and personally 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; 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

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenants said they had paid a security deposit of \$425 and a pet damage deposit of \$425 on July 27, 2013 (receipt provided) and agreed to rent the unit for \$850 a month. The tenants vacated the unit on September 30, 2016 and provided their forwarding address in writing at that time. The female landlord returned their security deposit at that time but not their pet damage deposit. The landlord agreed these facts were correct. The tenant's pet damage deposit has never been returned and he gave no permission to retain any of it.

The landlord said this has been a huge mix-up. The female landlord had no intention of keeping the pet damage deposit but she was initially mistaken on how much in deposits had been paid. She had no receipt for the \$425 returned to the tenants and he kept asking them to confirm by email that they got the initial amount back. They did not and then there were debates on where and how to return the deposit. One tenant said she waited all day for it but the female landlord did not come. The male manager said they

had had a bank draft ready for some time for the balance but could not arrange delivery and did not want to give it without a receipt to acknowledge it.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached. All evidence was considered although only evidence relevant to the decision is quoted.

Analysis:

Section 38(1) of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1) (a) the date the tenancy ends, and

38(1) (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1) (d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on September 30, 2016 and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6) (a) may not make a claim against the security deposit or any pet damage deposit, and

38(6) (b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a pet damage deposit of \$425 and was obligated under Section 38 to return this amount if they determined not to seek it's retention through Dispute Resolution. Although the landlord contended it was not returned in time because he wanted email confirmation from the tenant of the original amount paid out, I find section 38 of the Act does not impose an obligation on the tenant to provide

receipts. I find the onus is on the landlord in section 38 to return the deposit and section 88 and 89 of the Act provide for legal methods of delivery. I find the tenants entitled to double the amount of the pet deposit which was not returned. The amount which is *doubled* is the original amount of the deposit.

Conclusion:

I find the tenant has established an entitlement claim for \$850 and is further entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$950.00**.

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: April 13, 2017

Residential Tenancy Branch

