



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 gave sworn testimony. The tenant provided evidence that she had served the landlord with her forwarding address and the Application for Dispute Resolution by registered mail. The landlord agreed she 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; 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 she is entitled to the return of double the security deposit according to section 38 of the Act and to other compensation?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. It is undisputed that the tenancy commenced January 1, 2017 on a fixed term lease to April 30, 2017, a security deposit of \$250 was paid and rent was \$500 a month plus utilities. The tenant vacated the unit on April 14, 2017 but paid rent for all of April and provided her forwarding address in writing on May 1, 2017. The landlord returned \$198 of the security deposit but retained \$52. The landlord agreed these facts were correct. The remainder of the tenant's deposit (\$52) has never been returned and she gave no permission to retain any of it.

The landlord said she retained \$52 of the deposit for cleaning costs for the tenant had vacated early without notice and new people moved in and wanted cleaning done. She had not filed an Application to claim against the deposit and I advised her in the hearing how to do this within the two year time limit specified in the Act.

After calculating the tenant's potential entitlement under section 38 of the Act (\$250x2 - \$198 returned = \$302 + \$100 filing fee), the parties freely and voluntarily decided to settle the matter on the following terms and conditions:

Settlement Agreement:

- 1. The tenant will receive a monetary order for \$204 representing twice the unrefunded amount of the security deposit (\$52x2) plus the filing fee.**
- 2. This settles all matters between them in respect to this tenancy and the landlord agrees she will not file an Application to claim against the tenant.**

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 parties considered their options and after discussion freely agreed to settle the matter on the terms as stated above.

Conclusion:

I find the tenant entitled to a monetary order for \$204 including filing fee in full settlement of all potential claims of the parties in respect to this tenancy.

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: August 24, 2017

Residential Tenancy Branch