



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RP

Introduction:

Only the tenant applicant attended the hearing and gave sworn testimony. The tenant stated he had served the landlord with the Application for Dispute Resolution by registered mail but was unable to provide a tracking number as he said he was homeless. He changed his story a few times but was unable to provide satisfactory evidence that he served the landlord with his forwarding address. I find insufficient evidence that the documents were legally 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) An Order to return his personal property pursuant to section 65. SERVICE

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and to the return of his personal property?

Background and Evidence:

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. No documentary evidence was provided. The tenant said he had paid a security deposit of \$275 and was evicted from a condemned building. He said he vacated in March 2017 but is homeless so can't provide a forwarding address to the landlord. When I told him that was necessary to obtain the refund of his security deposit, he became very argumentative and tried to say it was in the application that he sent by registered mail but he had no objective evidence that he sent the registered mail. The landlord did not attend the hearing so it was impossible to verify any of the details. When I tried to give him information that he could provide a forwarding address of an advocate or a relative for the return of his security deposit, he

became angry and more argumentative. He insisted he needed his property now as the building is condemned and may be taken down at any time.

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 tenant provided insufficient evidence that he had paid a security deposit, the amount or that he had provided a forwarding address in writing to the landlord. There was no lease or receipt in evidence and the landlord did not attend to verify details. I

also find insufficient evidence that the tenant served the landlord with his application by registered mail. Although he said he was homeless so unable to confirm service with a tracking number or otherwise, I did not find his evidence credible. Records show he has had at least four hearings in the Residential Tenancy Branch within the past few years, one of which was dismissed for lack of service. Therefore he should have known the importance of providing details of service. I dismiss his application for the refund of his security deposit and give him leave to reapply after service of a forwarding address on the landlord.

In respect to the return of his personal property, I find the landlord has an obligation to allow the tenant to retrieve his personal property pursuant to section 65 (e) of the Act and Residential Tenancy Regulations part 5. I find this obligation exists whether or not the tenant has legally served an application on the landlord. Therefore, I order the landlord to allow the tenant to retrieve his personal property. I understand the building may be condemned so an escort or other arrangements may be necessary.

Conclusion:

I dismiss the application of the tenant for the refund of his security deposit and give him leave to reapply. I find the tenant entitled to an Order that the landlord allow him to retrieve his personal property.

I HEREBY ORDER THE LANDLORD to make an appointment with the tenant and allow him to retrieve his personal property, with an escort such as the Police if necessary.

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: November 21, 2017

Residential Tenancy Branch