



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

The tenant/applicant did not attend the hearing. The landlord's representative attended and gave sworn testimony. He agreed they received the Application for Dispute Resolution/Notice of Hearing. 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

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?

Background and Evidence

Only the landlord's representative attended the hearing. After waiting 10 minutes, the hearing proceeded in the tenant/applicant's absence. The landlord was given opportunity to be heard, to present evidence and make submissions. The landlord said the tenancy commenced March 31, 2016 on a fixed term to March 31, 2017. Rent was \$1300 a month plus utilities and a security deposit of \$650 was paid. The landlord said the security deposit has not been refunded as the tenant owes \$933.20 in unpaid utilities which will be added to the landlord's taxes by the city if they are not paid. In evidence are letters advising the tenant of this and stating he would get his deposit back if he paid his utility bill.

The tenant did not attend the hearing to support his application. No information was provided by him regarding the time he vacated or whether he had provided his forwarding address in writing to the landlord. 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 paid \$650 security deposit which has not been refunded. However, I find insufficient evidence to prove the tenant ever served the landlord with his forwarding address or gave the landlord permission to retain any of the deposit.

Conclusion:

I dismiss the application of the tenant in its entirety.

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: December 11, 2017

Residential Tenancy Branch