



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 he had served the landlord with the Application for Dispute Resolution by registered mail and by mail with his forwarding address in June 2015 and in December 2015. The landlord agreed he had received the documents. 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.

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

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$225 on August 15, 2012, vacated the premises and provided his forwarding address in writing in June 2015. He said the landlord had provided an incorrect address so he sent the forwarding address again in December 2015. The landlord agreed these facts were correct but said the tenant had not given him adequate Notice to End his tenancy so he incurred rental loss of one month. He had not filed an Application for Dispute Resolution to claim against the deposit. The tenant's deposit has never been returned and he gave no permission to retain any of it.

I advised the landlord in the hearing how to do claim within the two year time limit specified in the Act. However, it appears he is out of time as it is beyond the two year limit from the end of the tenancy.

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)). The landlord asked me if I had discretion to deduct rent owing from the deposit. I informed him that I did not without his application to claim against the deposit as I am bound by the legislation. He queried the fairness of the legislation and I advised him that was a matter for the legislature.

I find the evidence of the tenant credible that he paid \$225 security deposit in August 2012, vacated and served the landlord unsuccessfully with his forwarding address in writing in June 2015 and successfully in December 2015. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit. I find the landlord has made no application to claim against the deposit. I find the tenant entitled to recover double his security deposit in accordance with section 38 of the Act.

Conclusion:

I find the tenant entitled to a monetary order as calculated below. The filing fee was waived.

Original security deposit	225.00
Double security deposit	225.00
Total Monetary Order to Tenant	450.00

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: December 19, 2017

Residential Tenancy Branch