



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD RR

Introduction

Only the tenant attended the hearing and gave sworn testimony. The tenant said they served the Application for Dispute Resolution on the landlord by registered mail and provided the receipt to show it was delivered on July 27, 2017. She also provided evidence of sending her forwarding address by registered mail with a request for the refund of her security and pet damage deposits and a proportionate refund of rent. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain compensation of the proportion of one month's rent (\$583.33) for illegal eviction and changing the locks contrary to section 31 of the Act;
- b) To obtain a refund of double the deposits pursuant to section 38 of the Act.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they were illegally evicted and the locks wrongfully changed to lock them out? If so, are they entitled to compensation and in what amount? Is the tenant entitled to a refund of double the security deposit?

Background and Evidence

Only the tenant attended the hearing although the landlord was successfully served with the Notice of Hearing. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit of \$350 and a pet damage deposit of \$100 (receipts provided) and agreed to rent the unit for \$700 a month since April 2017. She said the landlord sent a text telling her she must move out of the unit and he changed the locks on June 5, 2017. She was able to get her belongings out before he changed the locks. Texts are in evidence concerning the circumstances. The landlord said in one of the texts that he believed the tenant was going to burn his house down and, as he lived upstairs, she had to leave. He served no formal Notice to End Tenancy on her and he collected her June rent.

The tenant said she sent a letter by registered mail on June 6, 2017 with her forwarding address and a request that the landlord refund rent for the balance of June (\$564.52) after his illegal eviction and return her security and pet damage deposit. She states she gave no permission to retain any of her deposits and they have not been returned.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

On preponderance of the relevant evidence for this matter;

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 or pet damage deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on June 6, 2017 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.

I find the evidence of the tenant credible that she paid \$350 security deposit and \$100 pet damage deposit, served the landlord by registered mail with her forwarding address in writing on June 6, 2017 and vacated due to being locked out on June 5, 2017. I find she gave no permission for the landlord to retain the deposits and has not received the refund of her deposits. The tenant's credibility is supported by receipts and letters in evidence. I find the tenant entitled to a refund of double her deposits.

I find also the weight of the evidence is that the landlord locked out the tenant on June 5, 2017, thus illegally evicting her. No Notice to End Tenancy was served in a formal form as required by sections 52 and 47 of the Act. I find the tenant entitled to a refund of rent paid for June 6 to June 30 as she was illegally evicted and could not occupy the unit during that time. She paid \$700 for June (receipt in evidence) and occupied the unit for 5 days ($700/30 \text{ days} = \$23.33 \text{ a day} \times 5 \text{ days} = \116.65). I find the amount to be refunded is \$583.33. (25 days locked out= \$583.33).

Conclusion:

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

Double security deposit (350x2)	700.00
Double pet damage deposit (100x2)	200.00
Refund portion of June rent	583.33
Total Monetary Order to Tenant	1483.33

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: January 17, 2018

Residential Tenancy Branch