



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 (the landlord represented by his office manager who is hereinafter called 'the landlord') and gave sworn testimony. The tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and by personally completing a form with her forwarding address on July 14, 2017 when the tenants were forced to evacuate due to a fire. The landlord agreed they 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 38

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?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the tenant paid a security deposit of \$350 on July 1, 2014. Current rent was \$750 a month when a roof fire occurred in July and the tenants were forced to evacuate. The tenant vacated the unit on July 6, 2017 but had to pick up belongings so returned keys on July 16, 2017. The parties agreed the building was no longer habitable. The tenant provided her forwarding address in writing on July 14, 2017 when filling out forms after the fire. The landlord agreed these facts were correct. The landlord confirmed they had not filed an Application to claim against the deposit.

The parties agreed the landlord sent a cheque for \$350 to the tenant on September 5, 2017. The tenant claims this is well beyond the 15 days allowed in section 38 of the Act and asks that it be doubled and that she receive another \$350.

The landlord said they had a lot of financial difficulty when the building burned so they did not have the funds to pay back the security deposit in time. The insurance funds were not received until October.

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 deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on October 02, 2014 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.

As explained to the parties in the hearing, section 38 of the Act is clear. It provides the security deposit must be paid within 15 days of the later of the tenant vacating and providing their forwarding address in writing. It is very unfortunate that the landlord suffered big losses through the fire but section 38 does not provide discretion to extend the time for payment even for special circumstances. As the tenant received the refund of her deposit but out of time, and the landlord had not filed an Application to claim against it, I find the tenant entitled to recover the doubled portion of the security deposit which is \$350.00.

Conclusion:

The tenant's application is granted. I find the tenant entitled to a refund of \$350. The filing fee was waived.

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 30, 2018

Residential Tenancy Branch