



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Only the tenant 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. The mailing address on the registered mail was verified as the service address on the lease agreement. 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
- b) To recover the filing fee for this application.

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 tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. He said he also represented his mother who was the co-tenant but has some difficulty with English. The tenant said he had paid a security deposit of \$850 on July 15, 2015 as stated on his lease in evidence and agreed to rent the unit for \$1700 a month. The tenant vacated the unit on August 13, 2017 and returned the keys. He provided his forwarding address in writing on August 30, 2017. The tenant's deposit has never been returned and he gave no permission to retain any of it. He has received no Application from the landlord to claim against it.

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

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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 evidence of the tenant credible that he paid \$850 security deposit on July 15, 2015 as it is supported by his lease in evidence. I find he served the landlord by mail with his forwarding address in writing on August 30, 2017 and vacated on August 13, 2017. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

Original deposit (no interest 2015-2018)	850.00
Double deposit	850.00
Filing fee	100.00
Total Monetary Order to Tenancy	1800.00

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: April 11, 2018

Residential Tenancy Branch