



Dispute Resolution Services

Page: 1

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 in their dropbox and by email. He also provided evidence of service of their forwarding address by email dated June 4, 2017 and evidence of service by email dated February 20, 2017 of their intention to vacate the unit by February 20, 2017 due to safety issues. The landlord agreed they had received the emails and delivery to their drop box. Although the documents were not served pursuant to sections 88 and 89 of the Act, I find the tenants documents were sufficiently served pursuant to section 71(2) for the purposes of this hearing as the relevant evidence was received. 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 they are 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 had not received the landlord's evidence as the landlord sent it to the tenant's address written on their Application, rather than the forwarding address given for return of the security deposit. The tenant's Application was filed in November 2017 and he said the address on the Application was a temporary address and they would have received any evidence sent to their forwarding

Residential Tenancy Branch

#RTB-136 (2014/12)



address which was provided on April 4, 2017. I read and told the tenant what was in the landlord's evidence and the hearing proceeded.

The parties agreed the tenants had paid a security deposit of \$750 in December 2016 and agreed to rent the unit for \$1500 a month. The tenant vacated the unit on February 20, 2017 citing safety issues and provided their forwarding address in writing on April 4, 2017. The tenant's deposit has never been returned and he gave no permission to retain any of it. The landlord agreed these facts were correct but said the unit was abandoned by the tenants.

The landlord said they retained the deposit for they considered the unit abandoned; it was left dirty and they were unable to rent it until March 15, 2017. They said the tenant did not file an Application for the deposits return within the 15 days allowed. I explained section 38 of the Act and that they had two years from the end of the tenancy to file an Application to claim damages against the tenant.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached. All of the evidence was considered but only evidence relevant to the decision is noted.

.

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 they paid \$750 security deposit in December 2016, served the landlord by email with their forwarding address in writing on April 4, 2017 and vacated on February 20, 2017. I find they gave no permission for the landlord to retain the deposit and have not received the refund of the security deposit. The landlord stated she has not filed an Application to claim against the deposit. I find the tenant entitled to recover double his security deposit. I highlighted above the relevant part of section 38 which provides the landlord had 15 days from the later of the tenant vacating and providing their forwarding address in writing to return the deposit; the landlord noted she had misunderstood that section.

Although the tenant noted they had to vacate without a legal one month notice due to safety issues, I declined to consider their evidence of safety concerns and the landlord's rebuttal evidence since the tenant's claim was for the return of their safety deposit and the landlord had not filed an Application to claim for rental loss.

Conclusion:

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

Original Deposit (no interest 2009-2018)	750.00
Double deposit	750.00
Filing fee	100.00
Total Monetary Order to Tenant	1600.00

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: July 24, 2018

Residential Tenancy Branch