



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMER BUSINESS CENTRE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD RP MNDC FF

Introduction

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:28 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11 a.m. on September 20, 2018. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn or affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

Only one tenant of the five listed tenants attended the hearing and the tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail in August 2018 and provided his forwarding address in the same envelope. He was unable to verify when any of the other tenants had provided their forwarding addresses in writing. I find the documents for the first tenant, Y.M., were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The five tenants named in the Application apply pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double their security deposits pursuant to Section 38;
- b) An Order to return personal property (a refrigerator); and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Have the tenants proved on the balance of probabilities that they are each entitled to the return of double their security deposits according to section 38 of the Act? Has one tenant proved that his property should also be returned?

Background and Evidence

Y.M was the only tenant who attended the hearing and was given opportunity to be heard, to present evidence and make submissions. He provided evidence he had paid a security deposit of \$540 and a key deposit of \$100 on April 19, 2018 with a lease in evidence. He agreed to rent the unit for \$1080 a month. The tenant vacated the unit on April 23, 2018 after a request from the landlord and provided his forwarding address in writing in August 2018 by registered mail together with a copy of this application. The tenant's deposit has never been returned and he gave no permission to retain any of it. The tenant also left a small refrigerator in the property as he was in another country when required to vacate. He requests the landlord be ordered to return it.

The tenant, Y.M., confirmed he had no written authority to represent the other four tenants and he had provided no evidence regarding how or when they provided forwarding addresses to the landlord for the return of their deposits. I explained to him the problem with the evidence; his friend attended and also got the information as Y.M. had some problems understanding the issues. The tenant also explained that the landlord may have been out of the country and not received the registered mail with his forwarding address and details of this hearing. He asked what the recourse of the landlord might be. I advised him that the landlord might ask for a Review within two days of receiving this Decision to prove they did not receive the mail so were unable to attend due to circumstances beyond their control. If successful on Review, the landlord might be granted a new hearing.

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 \$540 security deposit and \$100 key deposit, vacated on April 23, 2018 and served the landlord with his forwarding address in writing by registered mail in August 2018. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit or key deposit. I find the tenant entitled to recover double his security deposit. I find the tenant also entitled to recover his key deposit as he testifies he returned the keys.

I also find Y.M.'s evidence credible that he left a small refrigerator behind as others packed for him when he was out of the country. His photograph in evidence supports his credibility. I find him entitled to an Order that the landlord return his personal property.

In respect to the other four tenants named on the Application, I find insufficient evidence to support their claim. Y.M. did not have written authorization to represent them and did not have proof of when they provided their individual forwarding addresses to the landlord. Therefore, I dismiss the application of the other four tenants (P.K, S.O, T.N. and Y.N.) and give them leave to reapply.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to an Order that the landlord return his personal property. I find him entitled to recover the filing fee for this application.

Original Security deposit	540.00
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Double deposit pursuant to s. 38	540.00
Refund of key deposit	200.00
Filing fee	100.00
Total Monetary Order to Tenant	1380.00

I HEREBY ORDER that the LANDLORD return the property of the tenant Y.M., namely a small refrigerator, forthwith.

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: September 20, 2018

Residential Tenancy Branch