



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

The tenant attended this hearing and gave sworn testimony. The landlord did not attend, although I left the teleconference hearing connection open until 1:45 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1.30 p.m. on November 8, 2018. The tenant who attended the hearing was given a full opportunity to be heard, to present sworn 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. The tenant provided evidence that she had served the landlord with the Application for Dispute Resolution and her forwarding address on August 22 or 23, 2018 by personally delivering them to the office of their lawyer who is representing them on other matters related to her workplace. She said the landlord does not respond personally and all documents are given to their lawyer. 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

The tenant said she had paid a security deposit of \$475 in December 2008 and resided in the unit until July 28, 2018. Her rent was \$1000 a month. The tenant vacated the unit on July 28, 2018 as the landlord was installing new flooring and pressuring her to leave. She had to live in a trailer at first but provided her workplace address as her forwarding address on August 22, 2018 and requested the return of her security

deposit. The tenant's deposit has never been returned and she gave no permission to retain any of it. She said there was no move-out inspection done as new floors were being installed and the landlord wanted her out. She requests double her security deposit refunded in accordance with section 38 of the Act.

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

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 she paid \$475 security deposit in December 2008, served the landlord's lawyer personally with her forwarding address in

writing on August 22, 2018 and vacated on July 28, 2018. I find she gave no permission for the landlord to retain the deposit and has not received the refund of her security deposit. I find the landlord has not filed an Application to claim against the deposit. I find the tenant entitled to recover double her 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 Security Deposit	475.00
Interest 2008 –none 2009-2018	.60
Double security deposit	475.00
Filing fee	100.00
Total Monetary Order to Tenant	1050.60

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: November 08, 2018

Residential Tenancy Branch