



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

This hearing dealt with an application by the tenant 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.

SERVICE

Both parties attended the hearing and the tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and by text with their forwarding address. The landlord agreed she 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.

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 and to recover their filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The parties agreed that the tenant paid a security deposit of \$750 about October 2013 and agreed to rent the unit for \$1500 a month. The tenant vacated the unit in June 2014 and provided their forwarding address in writing (text) on June 30, 2014; the landlord said she did not recall the date of provision of the forwarding address but she had it to deliver her list of damages in July 2014. The tenant's deposit has never been returned and they gave no permission to retain any of it.

The landlord said she retained the deposit for the tenant had caused damage to the unit. She provided evidence of a number of items damaged and costs incurred. She

had not filed an Application to claim against the deposit and I advised her in the hearing how to do this within the two year time limit specified in 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 they paid \$750 security deposit in October 2012, served the landlord by text with their forwarding address in writing in June or early July 2014 and vacated on or before June 30, 2014. I find they gave no permission for the landlord to retain the deposit and have not received the refund of the security deposit. I find the landlord agreed with these facts. The landlord stated she has not filed

an Application to claim against the deposit. I find the tenant entitled to recover double the 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 (no interest 2012-15)	750.00
Double Security Deposit	750.00
Filing fee	50.00
Total Monetary Order to Tenant	1550.00

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: June 02, 2015

Residential Tenancy Branch

