Dispute Resolution Services

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
Only the tenant attended the hearing and provided sworn evidence that he had served the landlord with the Application for Dispute Resolution by registered mail and personally with his forwarding address. The tenant provided verification of successful delivery with signature of the registered mail. 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 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 and was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of $475 on May 22, 2011 through a third party (receipt provided) and agreed to rent the unit for $950 a month. The tenant vacated the unit on July 29, 2014 and provided his forwarding address in writing on July 30, 2014.

The landlord filed an Application to claim against the deposit but was unsuccessful in a hearing on March 3, 2015. The arbitrator at that time ordered the landlord to return the tenant's security deposit in full within 15 days of receipt of the Decision. The tenant's deposit has never been returned and he gave no permission to retain any of it. He requests double the security deposit and to recover the filing fee.

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 $475 security deposit on May 22, 2011 through a third party, served the landlord personally with his forwarding address in writing on July 30, 2014 and vacated on July 29, 2014. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit.

Although the landlord filed an Application on August 12, 2014 which is within the 15 day period, I find they were unsuccessful and they were ordered at that time to refund the

deposit. As they did not refund the tenant's deposit to this date, I find the tenant entitled to recover double 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 2011-15)	475.00
Double deposit	475.00
Filing fee	50.00
Total Monetary Order to Tenant	**1000.00**

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: September 16, 2015

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Residential Tenancy Branch