# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes     MNSD, MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on May 31, 2016 for the return of his security deposit and for compensation for damage or loss under the *Residential Tenancy Act* (the "Act").

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Landlord during the nine minute duration of the hearing; the Landlord did submit documentary evidence prior to the hearing.

The Tenant testified the Landlord was served with a copy of the Application and the Notice of Hearing documents by registered mail. The Tenant provided the Canada Post tracking number into evidence to verify this method of service. The Tenant testified that the documents were sent on June 8, 2016 and were received and signed for by the Landlord on June 22, 2016.

Based on the undisputed evidence of the Tenant and the fact that the Landlord had responded to this hearing by submitting documentary evidence, I am satisfied that the Tenant complied with Section 89(1) (c) of the Act in serving notice of this hearing to the Landlord. As the Landlord was put on notice of this hearing but failed to appear to present and explain the documentary evidence submitted, I only heard the undisputed evidence of the Tenant and find as follows.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord and is the Tenant entitled to double the return of his security deposit?

Background and Evidence

The Tenant testified that this tenancy started on November 1, 2015 on a month to month basis.  The written tenancy agreement provided as evidence shows that rent was payable in the amount of $1,850.00 on the first day of each month. The Tenant paid the Landlord a security deposit of $925.00 on September 13, 2015 which the Landlord still retains.

The Tenant testified that the tenancy was ended pursuant to a signed mutual agreement which ended the tenancy on April 1, 2016. The Tenant testified that he sent his forwarding address to the Landlord by registered mail on May 3, 2016. The Tenant provided the Canada Post tracking number into evidence to verify this method of service. The Tenant provided evidence to show that the Canada Post website confirmed this was received and signed for on May 5, 2016.

The Tenant confirmed that he had not given the Landlord written consent to withhold or make any deductions from the security deposit. Therefore, the Tenant now seeks to recover double the amount back from the Landlord pursuant to the provisions of the Act.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit at the end of a tenancy. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on April 1, 2016 by mutual agreement. I also accept the Tenant's evidence that the Landlord was provided with a forwarding address sent by registered mail on May 3, 2016 which the Landlord received on May 5, 2016. Therefore, the Landlord would have had until May 20, 2016 to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or obtained written consent from the Tenant to withhold it. Therefore, I find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord.  At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of security deposit or to deductions to be made from them, the landlord must file an Application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that a landlord feels they are entitled to keep the security deposit, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenant is now entitled to double the return of his security deposits in the amount of $1,850.00 claimed. No interest is payable on this amount.

The Tenant is issued with a Monetary Order for this amount. This order must be served on the Landlord. The Tenant may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. The Landlord may also be held liable for the enforcement costs of the Monetary Order. Copies of the order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is awarded double the amount of $1,850.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 30, 2016

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Residential Tenancy Branch