



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC PSF MNSD FF

Introduction

Only the tenant attended the hearing and gave sworn testimony. She said she served the Application for Dispute Resolution personally to the landlord K.L. and texted both the owner and the landlord several times to remind them of the hearing time and date. She said she gave her forwarding address with the keys to K.L. on February 22, 2017. I find the documents were legally served ****to the landlord K.L.**** pursuant to sections 88 and 89 of the Act for the purposes of this hearing. ****Text messaging is not a legal method of service. As the tenant only legally served the landlord, K.L., with the Application, a Monetary Order, if any, will be issued in her favour against K.L. only**.** The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To compensate the tenant for withdrawal of necessary facilities contrary to section 27 of the Act; and
- c) To recover the security deposit

Issue(s) to be Decided:

The tenant explained there was no Notice to End Tenancy so she does not want to cancel it. She has also moved on so is not claiming compensation for facilities not provided. The remaining issue is whether she is entitled to the return of her security deposit and to recover the filing fee.

Background and Evidence

Only the tenant attended the hearing. She was given opportunity to be heard, to provide evidence and to make submissions. She said she rented the room from K.L. and gave him \$450 security deposit and her friend gave \$450 for the first month's rent. She moved in on February 1, 2017 and found the owner was renovating the house. He had ripped out the bathroom fixtures and removed the stove and oven from the kitchen. He told her she should leave. She found another home and vacated on February 22, 2017. She provided her forwarding address in writing with the keys on February 22,

2017 to K.L., her landlord. She was unable to provide a tenancy agreement or any receipts for she said K.L. ripped up the paperwork she gave him and threw it at her.

She said he promised to return her security deposit but she had received nothing to date. She gave no permission for him to keep any of it. She requests the return of her security deposit pursuant to section 38 of the Act.

On the basis of the documentary and solemnly sworn evidence presented for 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 \$450 security deposit in February 2017 ***to K.L.***, vacated on February 22, 2017 and, served the landlord ***K.L.*** personally with her forwarding address in writing on February 22, 2017. I find she gave no permission for the landlord to retain the deposit and has not received the refund of her security deposit. She said 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	450.00
Double the deposit	450.00
Filing fee	100.00
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: March 22, 2017

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON APRIL 10, 2017
AT THE PLACES INDICATED IN ****BOLD****.

Residential Tenancy Branch