



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of double her security deposit. The parties agreed that the landlords discussed in late December 2011 their request that the tenant vacate the rental premises to enable a family member to move into the rental unit. The male landlord in attendance at this hearing (the landlord) did not dispute the tenant's claim that she was asked to prepare the landlords' 2 Month Notice to End Tenancy for Landlord Use of the Property (the 2 Month Notice). The tenant prepared and provided the 2 Month Notice for the landlords' signature during the first week of January 2012. The effective date for the end of this tenancy was identified incorrectly as February 1, 2012. Based on the date of the landlord's signature of this 2 Month Notice, the corrected effective date for the end of the tenancy was February 29, 2012. The landlord confirmed that the tenant handed a copy of her dispute resolution hearing package to the female landlord on March 24, 2012. I am satisfied that both parties were served with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

This periodic tenancy commenced on August 15, 2011. Monthly rent was set at \$640.00, payable in advance on the first of each month. The parties agreed that the tenant paid a \$320.00 security deposit on August 8, 2011. The parties agreed that the tenant vacated the rental unit and provided keys to the landlords on February 29, 2012.

The tenant applied for a \$640.00 return of double her security deposit because she maintained that the landlords have not complied with the provisions of section 38 of the *Act*, by failing to return her security deposit in full within 15 days of the end of her tenancy.

The landlord confirmed that the tenant provided her forwarding address in writing to the female landlord on February 24, 2011. The tenant entered into written evidence a copy of that letter.

The parties agreed that the tenant paid her full monthly rent for January 2012, but did not make any payment of rent for February 2012. The parties agreed that the landlords' forgiveness of rent for February 2012 was designed to comply with the provisions of section 51(1.1) of the *Act* that allow a tenant to withhold the last month's rent when a 2 Month Notice under section 49 of the *Act* has been issued.

The parties agreed that the landlord gave the tenant \$300.00 in cash on February 13, 2012. At that time, the tenant signed a document confirming that she had received this payment and that the landlord would pay an additional \$320.00 if the tenant vacated the rental unit by February 15, 2012. The tenant testified that she returned the \$300.00 to the female landlord shortly after the male landlord gave this payment to her, after discussing this with her male friend, her male witness at this hearing. She said that she told the female landlord that she could not vacate the rental unit by February 15, 2012, and was intending to remain in the rental unit until the end of February 2012, the correct effective date when the landlords' 2 Month Notice could take effect. The \$300.00 payment was designed to partially compensate the tenant (pursuant to section 51 of the *Act*) for the landlords' issuance of the 2 Month Notice. However, since the tenant was not planning to vacate the rental unit until the end of February and was not intending to pay rent, her compensation for the landlords' 2 Month Notice was by way of section 51(1.1) of the *Act*. The tenant testified that the female landlord told her that she would rip up the receipt issued to the male landlord earlier that day as the \$300.00 cash payment had been returned to the female landlord. The tenant's male witness gave sworn testimony that he witnessed the male landlord pay the tenant \$300.00 and receive a receipt for that payment on February 13, 2012. The tenant's male witness also testified that he saw the tenant return the \$300.00 to the female landlord later that day, after discussing the landlord's proposal with him. He also confirmed that the female landlord said that she would destroy the pink receipt given to the male landlord earlier that day. The tenant also maintained that her mother, the tenant's female witness, also witnessed these transactions. The tenant's female witness testified that she was told by the tenant that the above events occurred. However, the tenant's female witness testified that she did not personally witness the tenant's return of the \$300.00 to the female landlord on February 13, 2012.

The landlord gave sworn testimony that the tenant never returned the \$300.00 payment to the female landlord. He said that the tenant still retains that \$300.00 payment. He and his translator (his sister) offered to submit the receipt from the tenant to

demonstrate that the tenant received their \$300.00 payment that day. The landlord asked that the \$300.00 payment to the tenant on February 13, 2012 be considered as the return of the security deposit as the tenant did not vacate the rental unit during February 2012 and did not pay rent for that month.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days 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 security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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."

In this case, there is undisputed evidence that the tenant provided her forwarding address in writing on February 24, 2012. The landlords' obligation to return the security deposit in full or apply for dispute resolution to retain any portion of that deposit commenced on February 29, 2012, the date when the tenant vacated the rental unit.

In dispute is whether the tenant has retained the \$300.00 payment from the landlord on February 13, 2012. I also need to consider whether this payment, if retained by the tenant, constituted a return of a portion of the tenant's security deposit.

Although the landlord offered to send a copy of the tenant's receipt for having received the \$300.00 payment on February 13, 2012, I advised the parties that the existence of that receipt and the wording of that receipt was not at issue. Of central importance to the tenant's application is the agreement by both parties that the \$300.00 receipt made no mention of this payment being a return of the tenant's security deposit. I note that the \$300.00 payment is not the same amount as the \$320.00 security deposit. I also take into account the agreement between the parties that the receipt stated that the landlords agreed to pay the tenant an additional \$320.00 if the tenant vacated the rental unit by February 15, 2012. Based on the parties' agreement as to the wording of the receipt issued on February 13, 2012 and the purpose of the landlord's \$300.00 payment on February 13, 2012, I find that the \$300.00 payment was not intended as a return of the tenant's security deposit. Rather, I find that there is undisputed evidence that the

landlord's \$300.00 payment was intended to address the landlord's obligation under section 51 of the *Act* to compensate for the landlord's issuance of the 2 Month Notice. Under these circumstances, I find that any payment made by the landlords on February 13, 2012 was not a return of the tenant's security deposit.

As outlined above, the parties gave conflicting evidence with respect to whether the tenant returned the landlord's \$300.00 payment to the female landlord on February 13, 2012. On a balance of probabilities, I find that the best evidence regarding this issue was provided by the tenant. The tenant and her male witness gave sworn testimony that the tenant returned the male landlord's \$300.00 payment to the female landlord later on February 13, 2012. Given the short time frame for making a decision on whether to vacate the rental unit by February 15, 2012 and thus qualify for the landlord's offer to pay an additional \$320.00 to the tenant, I find the tenant's testimony that she discussed this matter with the male witness who was in the rental unit when the male landlord attended convincing.

The landlords were aware that the tenant was seeking a return of double her security deposit for the landlords' alleged failure to return that deposit to her within 15 days of the end of her tenancy. The landlords entered no written evidence. While the male landlord testified that the tenant did not return the \$300.00 to his wife on February 13, 2012, the female landlord did not participate in this hearing, nor did she submit any written statement. Since the tenant's alleged retention of the \$300.00 payment would seem to have been a central feature of any challenge that the landlords wished to make against the tenant's claim for a monetary award, I find that the direct sworn testimony of the tenant and her male witness is better evidence than the landlord's denial that his wife received the \$300.00 payment from the tenant later on February 13, 2012.

Based on the evidence before me, I find it more likely than not that the tenant returned the landlord's \$300.00 payment on February 13, 2012, and that this payment was not a return of the tenant's security deposit. I find that the landlord has not returned the security deposit within 15 days of the end of this tenancy. The tenant is therefore entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount only. No interest is applicable over this period.

Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to recover her security deposit and to obtain a monetary award equivalent to the value of her security deposit as a result of the landlords' failure to comply with the terms of section 38 of the *Act*.

Item	Amount
Security Deposit paid on August 8, 2011	\$320.00
Monetary Award Equivalent to Value of Tenant's Security Deposit due to Landlords' Failure to Comply with s. 38 of the <i>Act</i>	320.00
TOTAL MONETARY ORDER	640.00

The tenant is provided with a Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 12, 2012

Residential Tenancy Branch