



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Inn Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for the return of double her security deposit.

The tenant and an advocate for the tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the evidence of the tenant was presented. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The tenant testified that the Notice and evidence was served on the landlord via personal service to a male who the tenant believes was named "R" working at the front desk of the Inn on February 20, 2013 at 2:30 p.m. The advocate for the tenant testified under oath that she was present with the tenant when the tenant served the male at the front desk of the Inn on February 20, 2013 with the Notice and the tenant's evidence. I find the landlord was sufficiently served with the Notice and tenant's evidence in accordance with the *Act*.

Preliminary and Procedural Matter

The first matter that I must decide is whether I have jurisdiction to hear this dispute. The tenant testified that she did not have another residence at the time she was residing at the Inn. The tenant also stated that she was living at the Inn on a "week to week basis" with no specific end date known when she moved in which is supported by the documentary evidence. The tenant testified that she paid a security deposit of \$200.00 to the landlord on or about January 15, 2012 which is supported by the tenant's documentary evidence. Furthermore, the tenant testified that her tenancy lasted for approximately one and a half months. Based on the tenant's undisputed testimony and

the documentary evidence, **I find** that this **was not** vacation or travel accommodation. Therefore, **I find** a residential tenancy agreement was created and that as a result, I have jurisdiction to hear this dispute.

Issue to be Decided

- Is the tenant entitled to the return of double her security deposit under the *Act*?

Background and Evidence

A week to week tenancy began on January 15, 2012. Weekly rent in the amount of \$273.60 was due each week. A security deposit of \$200.00 was paid by the tenant at the start of the tenancy.

The tenant stated that she vacated the rental unit during the last week of February 2012. The tenant could not recall the specific date that she vacated the rental unit during the last week in February 2012.

The tenant stated that the landlord did not conduct a move-in or a move-out condition inspection report. The tenant testified that on January 28, 2013 the tenant returned to the Inn and hand delivered her new forwarding address to the landlord which was on paper. A copy of that document was submitted in evidence.

The tenant denies that she agreed to sign over any portion of the security deposit to the landlord. According to the tenant, the landlord refused to return her security deposit after she vacated the rental unit, and did not give her a reason as to why the landlord would not return her security deposit.

The tenant confirmed that she has not been advised of any claims towards the security deposit made by the landlord. The tenant is seeking the return of double her security deposit in the amount of \$400.00 under the *Act*.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's claim for the return of double the security deposit – I accept that the tenant vacated the rental unit during the last week of February 2012. The documentary evidence submitted by the tenant supports the tenant's claim that she provided her

forwarding address in writing to the landlord on January 28, 2013 which is within the one year timeline set out under section 39 of the *Act*.

I accept the undisputed testimony of the tenant that the landlord has not returned any portion of the tenant's \$200.00 security deposit.

Section 38 of the *Act* applies which states:

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.

(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.

[emphasis added]

In the matter before me, **I find** that the landlord failed to repay the \$200.00 security deposit or make an application for dispute resolution claiming against the security deposit. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant provided on January 28, 2013. Therefore, **I find** the tenant is entitled to the return of double the original security deposit of \$200.00 for a total of **\$400.00**. I note that the security deposit has accrued no interest since the start of the tenancy.

Furthermore, I **caution** the landlord that money paid by a tenant for a security deposit is not the property of the landlord. A security deposit is held in trust by the landlord throughout the tenancy. A landlord may only keep all or a portion of the security deposit or key deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenant.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$400.00** comprised of double the original \$200.00 security deposit. I **grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$400.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenant has established a total monetary claim of \$400.00. I grant the tenant a monetary order under section 67 in the amount of \$400.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 28, 2013

Residential Tenancy Branch

