



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Seascapes Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agent attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on November 01, 2012. The tenancy ended on June 30, 2013. Rent for this unit was \$700.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of

\$337.50.00 on November 01, 2012. The parties also agree that they took part in a move in condition inspection at the start of the tenancy.

The tenant testifies that the landlord has failed to return their security deposit within 15 days of receiving their forwarding address in writing. The tenant testifies that the forwarding address was provided to the landlord at their office on May 28, 2013 in the tenants Notice to end the tenancy and again on June 30, 2013 when the tenant returned the keys to the unit. The tenant has provided a copy of the Notice letter containing the forwarding address in evidence. The tenant therefore seeks to recover double the security deposit from the landlord. The tenant had applied for \$750.00 but during the hearing when the amount of security deposit paid was discussed the tenant revised their claim to double the amount of the actually security deposit paid. The tenant therefore seeks to recover \$675.00. The tenant agrees that they did receive a cheque from the landlord which is dated July 07, 2013 for \$265.00. This cheque was received on July 25, 2013. The tenant testifies that the landlord has made unauthorised deductions from the security deposit.

The landlord's agent testifies that deductions were made from the security deposit for carpet cleaning. The landlord's agent testifies that the tenant did not arrange a move out inspection of the unit and two final opportunities for inspection forms were posted to the tenant's door at the beginning of July, 2013. The landlord agrees that these were posted to the door of the rental unit after the tenant had vacated the unit. The landlord does not recall seeing the tenants forwarding address and testifies that they could not contact the tenant by telephone.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do

either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. The landlord must arrange the inspection with the tenant on the last day of the tenancy or on another mutually agreed day before new tenants move into the rental unit. A landlord cannot post a final opportunity for inspection notice to the door of a rental unit after the tenants have vacated that unit as the tenants would not be there to take service of that document. In failing to complete the condition inspection when the tenants moved out, I find the landlord contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing. Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on May 28, 2013 and the tenancy ended on June 30, 2013. As a result, the landlord had until July 15, 2013 to return all of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$675.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

As the landlord has returned the sum of **\$265.00** this amount has been deducted from the tenant's monetary award

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$460.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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: October 30, 2013

Residential Tenancy Branch

