



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 4171 Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD and O

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and for “other”.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted no evidence in regards to this matter. The Tenant stated that she submitted documents to the Residential Tenancy Branch but she did not serve copies of those documents to the Landlord. As those documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began in 2012 and that the Tenant paid a security deposit of \$312.50. The parties agree that the tenancy ended on September 30, 2013 or October 01, 2013. The Tenant believes the forwarding address was provided to the Landlord, in writing, when the condition inspection report was completed on September 30, 2013 and the Landlord believes the forwarding address was written on the notice to end tenancy that the Landlord received on August 29, 2013.

The Tenant stated that she did not authorize the Landlord to retain any portion of her security deposit. The Landlord argued that the Tenant acknowledged that there was damage to the rental unit on the condition inspection report that was completed at the

end of the tenancy. The Landlord acknowledges that the Tenant did not give the Landlord written authority to retain any portion of the security deposit, either on the condition inspection report or on any other document.

The parties agree that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit. The parties agree that the Landlord provided the Tenant with a cheque for \$26.50, which was a partial refund of her security deposit; however that cheque has not been cashed and is now "stale dated".

Analysis:

Section 38(4) of the *Residential Tenancy Act (Act)* authorizes a landlord to retain an amount from a security deposit or a pet damage 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. As there is no evidence that the Tenant gave the Landlord written permission to retain a specific amount of the security deposit that was paid, I find that section 38(4) of the *Act* does not apply to these circumstances.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion:

The Tenant has established a monetary claim of \$625.00, which is comprised of double the security deposit and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the cheque for \$26.50 that was previously provided to the Tenant as a partial refund of the security deposit is "stale dated" and, theoretically, should not be honoured by the Landlord's financial institution. In the event the Tenant is able to cash that cheque, that payment should be deducted from the award of \$625.00.

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 28, 2014

Residential Tenancy Branch

