



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC VILLAGE PHASE II (also known as PACIFIC VILLAGE II)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

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, plus the recovery of the filing fee.

The tenant and two agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their evidence is provided below and includes only that which is relevant to the hearing.

During the hearing, the agents confirmed that the landlord received the tenant's evidence and that landlord had the opportunity to review the tenant's evidence prior to the hearing. The agents confirmed that the landlord did not submit evidence in response to the tenant's application. Based on the above, I find the landlord was served with evidence in accordance with the *Act*.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on May 1, 2008. Monthly rent in the amount of \$850.00 was due on the first day of each month. A security deposit of \$425.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The parties agreed that the tenant vacated the rental unit on October 30, 2013. An outgoing condition inspection report was submitted in evidence. The tenant provided her

written forwarding address on the outgoing condition inspection report dated October 30, 2013. On Part “V” of that document, the tenant wrote that she did not agree with the report and the landlord did not provide for an area on the document where the tenant could disagree with the charges listed on the report. Furthermore, the landlord failed to fill out the “balance due” portion on the outgoing condition inspection report.

There is no dispute that the security deposit was not returned to the tenant. The landlord did not submit an application claiming towards the tenant’s security deposit.

Analysis

Based on the documentary evidence and the 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 tenancy ended on October 30, 2013 when the tenant vacated the rental unit. 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, the agents confirmed that the landlord did not submit an application claiming towards the tenant's security deposit. Furthermore, I find the landlord did not have permission from the tenant to deduct any amount from their security deposit as the landlord failed to provide an option on the outgoing condition inspection report not to agree to the charges listed. In addition, the landlord failed to fill out the "balance due" portion on the outgoing condition inspection report which I find does not support that the tenant had agreed to surrender any portion of her security deposit.

Given the above, and pursuant to section 38 of the *Act*, the landlord had to either return the full security deposit to the tenant or file an application to claim towards the security deposit within 15 days of receiving the tenant's forwarding address in writing on October 30, 2013, which was provided by the tenant in writing on the outgoing condition inspection report. The landlord did not have authorization from the tenant to retain any portion of her security deposit.

Based on 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 in writing on October 30, 2013, having not made a claim towards the security deposit. Therefore, **I find** the tenant is entitled to the return of double her original security deposit of \$425.00 in the amount of **\$850.00**. The original security deposit of \$425.00 has accrued **\$4.27** in interest since the start of the tenancy, which brings the total security deposit owing to the tenant in the amount of **\$854.27**, comprised of \$850.00 for the doubled security deposit, plus \$4.27 in interest on the original amount of the \$425.00 security deposit.

As the tenant was successful with her application, **I grant** the tenant the recovery of her filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$904.27**, comprised of \$854.27 for the doubled security deposit including interest, plus the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$904.27**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant's application had merit and the tenant's security deposit has been doubled due to the landlord breaching section 38 of the *Act* as a result.

The tenant has been granted a monetary order under section 67 in the amount of \$904.27. This order must be served on the landlord and 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: March 13, 2014

Residential Tenancy Branch

