



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LARLYN PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 his security deposit, and to recover the filing fee.

The tenant appeared at the teleconference hearing and gave affirmed testimony. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The tenant testified that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on February 5, 2014.

The tenant provided a registered mail receipt with tracking number in evidence and confirmed that the name and address matched the mailing address of the landlord provided verbally by landlord agent "RM" during the tenancy. The tenant confirmed that the registered mail package was successfully delivered and signed for on February 7, 2014, according to the Canada Post online registered mail tracking website. Furthermore, a web search of the landlord company name confirmed that the mailing address for the landlord was correct as written. Given the above, I find that the registered mail package was signed for and successfully delivered to the respondent landlord on February 7, 2014. I find the landlord was served in accordance with the *Act*.

Preliminary and Procedural Matter

At the outset of the hearing, the tenant confirmed that although he wrote the correct landlord company name in the details of dispute section of his Application, the name of the respondent landlord was missing a letter on the front page of his application. As a result, and given the correct wording used in the tenant's details of dispute, and

pursuant to section 64(3) of the *Act*, I have amended the tenant's application to reflect the correct spelling of respondent landlord company name.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 1, 2009 and reverted to a periodic, month to month tenancy after May 31, 2010. I note that there was clearly a written error for the year in the tenancy agreement, as the tenancy agreement was signed on November 30, 2009 and the end of the fixed term is written as May 31, 2009, which should read 2010. Monthly rent in the amount of \$625.00 was due on the first day of each month. A security deposit of \$312.50 was paid by the tenant at the start of the tenancy.

The tenant testified that he vacated the rental unit on December 23, 2013. The tenant confirmed that both an incoming and outgoing condition inspection report was completed. The tenant stated that he provided his forwarding address in writing to the landlord on the outgoing condition inspection report dated December 23, 2013.

The tenant stated that on the outgoing condition inspection report dated December 23, 2013, he agreed to surrender \$110.00 of his security deposit to cover the cost of carpet cleaning. The tenant stated that he received a cheque from the landlord on February 17, 2014 in the amount of \$312.50, however, the tenant is seeking double his security deposit as the landlord failed to return his security deposit within 15 days of December 23, 2013. The tenant filed his application on February 5, 2014.

Analysis

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

Tenant's claim for the return of double his security deposit – I accept the tenant's undisputed testimony that the tenancy ended on December 23, 2013 when the tenant vacated the rental unit, which was the same date the outgoing condition inspection report was completed.

The tenant agreed in writing on the outgoing condition report to surrender \$110.00 of his security deposit to the landlord for the purposes of carpet cleaning. The tenant also verbally confirmed that he surrendered \$110.00 of his \$312.50 security deposit on December 23, 2013, when he provided his written forwarding address to the landlord on the outgoing condition inspection report.

I accept that the tenant received \$312.50 from the landlord on February 17, 2014.
Section 38 of the *Act* applies and 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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

[my emphasis added]

In the matter before me, I find that the landlord did not repay the balance of the tenant's security deposit within 15 days of December 23, 2013, which is the end of tenancy date and the date the tenant provided his written forwarding address to the landlord on the outgoing condition inspection report, or make an application for dispute resolution claiming against the balance of the tenant's security deposit.

As the tenant has already surrendered \$110.00 at the end of the tenancy for carpet cleaning, I find that the landlord had until January 7, 2014 to return the tenant's security deposit balance of \$202.50, which the landlord failed to do. The tenant received \$312.50 from the landlord on February 17, 2014.

As a result, I find the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit balance of \$202.50 within 15 days of December 23, 2013, the date the tenancy ended which was the same date the landlord received the tenant's written forwarding address on the outgoing condition inspection report, having not made a claim towards the security deposit and without written permission to retain the \$202.50 withheld by the landlord. Therefore, **I find** the tenant is entitled to the return of double their security deposit balance of \$202.50, for a total of **\$405.00**, less the \$312.50 already returned to the tenant by the landlord, for a balance owing by the landlord to the tenant in the amount of **\$92.50**.

As the tenant's application had merit, **I grant** the tenant the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenant has established a monetary claim in the amount of **\$142.50**, comprised of the \$405.00 in compensation for a doubled security deposit balance of \$202.50 less the payment from the landlord to the tenant of \$312.50, plus the \$50.00 filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$142.50**. 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. The tenant has been granted a monetary order under section 67 in the amount of \$142.50. 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: May 23, 2014

Residential Tenancy Branch

