



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOME PROTECTION PROPERTY MGMT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OLC 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 an order for the landlord to comply with the *Act*, regulation or tenancy agreement, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of double her security deposit and pet damage deposit, and to recover her filing fee.

The tenant, an agent for the landlord (the "agent"), and two witnesses for the landlord appeared at the teleconference hearing. The parties were affirmed and during the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

The landlord stated that she could not open the DVD digital evidence served by the tenant. As a result, the DVD was excluded in full as it was not served in accordance with the rules of procedure. Other than the DVD described above, the parties confirmed that they received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence. Other than the DVD mentioned above which has been excluded in full, I find the parties were served in accordance with the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, by mutual consent of the parties, the name of the respondent landlord agent "SG" was removed from the tenant's application.

In addition to the above, the parties confirmed that the tenant vacated the rental unit on January 31, 2014, and as a result, the tenant's application for an order directing the

landlord to comply with the *Act*, regulation or tenancy agreement is dismissed as the tenancy as already ended and that portion of her application is moot as a result.

The tenant was advised that her filing fee from a previous application could not be applied for in this application, and that if she was successful, the remedy under the *Act* would be to grant her the return of the filing fee for this application only. As a result, I will not be considering the tenant's request for a filing fee in relation to a different application that is not before me. I will consider, however, the tenant's request for the recovery of the filing fee specific to the application before me.

Issues to be Decided

- Is the tenant entitled to the return of double her security deposit and pet damage deposit under the *Act*?
- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a fixed term tenancy agreement began on July 1, 2012 and reverted to a periodic, month to month tenancy agreement after July 1, 2013. Monthly rent in the amount of \$1,800.00 was due on the first day of each month. The tenant paid a security deposit of \$900.00 and a pet damage deposit of \$300.00, for a total of \$1,200.00 in combined deposits at the start of the tenancy.

The parties agree that the tenant vacated the rental unit on January 31, 2014. The agent confirmed that the tenant's written forwarding address was received by the landlord in writing on the outgoing condition inspection report dated January 31, 2014. The parties agreed that the tenant did not sign over any portion of her security deposit or pet damage deposit to the landlord. The agent stated that on February 12, 2014, a cheque in the amount of \$1,250.00 "was issued" to the tenant. The agent stated that the amount of \$1,250.00 was comprised of \$900.00 for the security deposit, \$300.00 for the pet damage deposit, plus \$50.00 for the filing fee from a previous decision, the file number of which has been reference on the front page of this decision for ease of reference. The agent stated that "I believe" I passed the cheque to her witness, "SG".

"SG" was called a witness and testified under oath that she mailed a cheque on either February 12th or February 13th of 2014 by regular mail and that no photocopy of the cheque was made. The agent and tenant did not have any questions for witness "SG".

The tenant stated that she had a conversation with “EP” who hung up on her after saying “no” to her receiving her deposits back. The agent did not call “EP” to testify during the hearing. As a result, the testimony of the tenant regarding her conversation with “EP” was not refuted by the agent or a witness for the landlord.

The agent confirmed that the landlord did not mail the cheque to the tenant by registered mail and had no documentary proof to prove the cheque was mailed, other than by referred to a stop payment document dated March 10, 2014 submitted in evidence. The landlord did not submit any proof of mailing the cheque on February 12th or February 13th of 2014, such as a receipt for postage from the post office. The agent confirmed that the landlord has not filed an application claiming towards the tenant’s security deposit or pet damage deposit, and did not have permission from the tenant to retain any portion of either deposit.

The tenant stated that she has not received a cheque from the landlord for the return of her deposits. The tenant is seeking double her security deposit and pet damage deposit under the *Act*, plus the recovery of her filing fee.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the

tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Tenant's claim for the return of double her security deposit and pet damage

deposit – The parties agree that the tenant vacated the rental unit on January 31, 2014. The parties also agree that the tenant provided her written forwarding address to the landlord on the outgoing condition inspection report dated January 31, 2014. The agent stated that “I believe” I passed the cheque for the tenant to witness “SG” on February 13, 2014. Witness “SG” stated that she mailed a cheque to the tenant on either February 12, 2014 or February 13, 2014 by regular mail and did not have any evidence such as a post office receipt and confirmed that she did not use registered mail. 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.

[my emphasis added]

In the matter before me, **I find** that the landlord failed to provide sufficient evidence to support that the landlord mailed a cheque to the tenant within 15 days of receiving the tenant's forwarding address in writing on January 31, 2014. I prefer the evidence of the

tenant over the agent and the landlord's witness "SG" as the agent stated "I believe" when describing when she passed a cheque to witness "SG" to mail to the tenant, while witness "SG" was not sure on the exact date she allegedly mailed a cheque to the tenant, and made the decision not to mail the cheque by registered mail, which would have provided documentary evidence to support that the cheque had in fact been mailed. The landlord had no evidence of mailing the cheque to the tenant such as a post office receipt dated February 12, 2014 or February 13, 2014. In addition, the tenant's testimony regarding her conversation with "EP" was not disputed during the hearing, which alleged that "EP" said "no" to the tenant receiving her deposits back, yet "EP" was listed as a witness and was not called by the agent during the hearing to testify. I accept that the tenant has never received a cheque from the landlord for either deposit to date.

Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit and pet damage deposit in full to the tenant within 15 days of receiving the forwarding address of the tenant in writing on January 31, 2014, having not made a claim towards the security deposit or pet damage deposit. Therefore, **I find** the tenant has met the burden of proof and is entitled to the return of double her original security deposit of \$900.00 and double her original pet damage deposit of \$300.00 for a total of **\$2,400.00**. This amount represents the original \$900.00 security deposit doubled to \$1,800.00, plus the original pet damage deposit doubled to \$600.00 due to the landlord breaching section 38 of the *Act*. I note that the security deposit and pet damage deposit has accrued \$0.00 in interest since the start of the tenancy.

As the tenant's application had merit, **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 **\$2,450.00**, comprised of \$2,400.00 for the return of the tenant's doubled security deposit and pet damage deposit, plus \$50.00 for the recovery of her filing fee. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$2,450.00**. 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 has established a total monetary claim of \$2,450.00 as described above and has been granted a monetary order under section 67 in that amount. 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: June 16, 2014

Residential Tenancy Branch

