



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenant applies to recover an \$800.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

The written tenancy agreement indicates that the landlord was Ms. J.M., not the respondent owner Mr. P.S.. By agreement of the parties and Ms. J.M., Ms. J.M. was added as a respondent to this application.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to return of his deposit or to have it doubled pursuant to s. 38 of the *Act*? If so, who is responsible to pay it, Mr. P.S., Ms. J.M. or both?

Background and Evidence

The rental unit is the upper portion of a two bedroom house. There is a suite located in the lower area of the home and it is occupied by others.

The tenancy started in September 2012 and ended December 1, 2014. The monthly rent was \$1600.00. The tenant paid an \$800.00 security deposit which has not been returned.

There is a written tenancy agreement. It is between the tenant Mr. H. and Ms. J.M. “of [S.G.M.] Realty” as landlord. The agreement does not mention the respondent Mr. P.S.

Ms. J.M. gave possession of the premises to the tenant. During the tenancy all the tenant's communication regarding landlord and tenant matters was with Ms. J.M. He was unaware of Mr. P.S.

At the end of the tenancy the tenant and Ms. J.M. performed a move out inspection together on December 2, 2014. A condition report was done up. It indicated that the landlord wanted to keep \$157.97 from the deposit for utility costs. The tenant says he wanted to see the utility bills before agreeing and so he did not sign the agreement. Ms. M.J. agrees.

The tenant provided his forwarding address in writing in the condition report.

In fact, Ms. J.M. had been acting throughout as an agent of Mr. P.S., the owner, pursuant to a property management agreement predating the tenancy. That relationship fell into discord after the end of this tenancy and Ms. J.M. directed the tenant to deal with the owner.

Counsel for the landlord argues that since the tenant did not sign the condition report he did not "participate" in the move-out inspection and so has lost the right to recover his deposit back pursuant to s. 36(1) of the *Act*.

Analysis

Is s. 36(1) of the *Act* applicable to foreclose the tenant from recovering the deposit?

Section 36(1) provides:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

It is clear that the tenant did participate. He was there. Perhaps it could be said that he did not participate fully by not signing the condition report, but s. 36(1) does not require him to "participate fully" in order to retain his right to recover his deposit.

I dismiss this argument.

The tenancy has ended, and the tenant has provided his forwarding address in writing. The landlord does not have the tenant's written authority to retain any of the deposit, nor has the landlord obtained an order under the *Act* against which to apply the deposit.

In such a case, s. 38 of the *Act* comes into operation. The relevant portions of that section for the purposes of this dispute are:

- 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.

I find that the tenant is entitled to recover his \$800.00 deposit, doubled to the amount of \$1600.00.

I find that the respondent Mr. P.S. was the undisclosed principal of the respondent Ms. J.M..

It is my understanding of the law of agency that a party to a contract with the agent of an undisclosed principal, other than a contract under seal (which this is not), may elect to claim against either the agent or the principal (*Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] 1 S.C.R. 842).

The tenant has elected to claim against the principal Mr. P.S.. He is entitled to a monetary award against Mr. P.S. in the amount of \$1600.00. The tenant did not pay a filing fee.

Conclusion

The tenant will have a monetary order against the respondent Mr. P.S. in the sum of \$1600.00

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 13, 2015

Residential Tenancy Branch

