



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASTRO VENTURE LTD./ HILLSIDE PLAZA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for authorization to obtain a return of all or a portion of her security deposit pursuant to section 38, a further amount equal to the value of her security deposit as a result of the landlord's failure to comply with section 38 of the *Act* and to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:44 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that she personally served the landlord by handing a complete copy of her Application for Dispute Resolution and Notice of Hearing (with evidence and amendment) to the property manager at the site of the rental unit on January 2, 2015. She testified that the property manager received the documents. Pursuant to section 89 of the *Act*, I find the landlord duly served with the tenant's application and supporting documentary materials.

Issues to be Decided

Is the tenant entitled to obtain a return of all or a portion of her security deposit?
Is the tenant entitled to a monetary award equal to the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this month to month tenancy began on September 30, 2013. The rental amount was \$825.00 payable on the first of each month. The tenant testified

that, at the time of her application for dispute resolution, the landlord continued to hold a \$412.50 security deposit that she paid on October 1, 2013. The tenant submitted a copy of the residential tenancy agreement signed and dated by both parties supporting the details of the tenancy. The tenant testified that she vacated the rental unit on October 31, 2014. She testified that she performed a condition inspection with the property manager on November 1, 2014. She testified that, at that time, she was advised there was no damage within the rental unit. The tenant testified that, on November 1, 2014, she provided a forwarding mailing address to the landlord.

The tenant testified that she filed her application for return of her security deposit on December 31, 2014 and that she filed her amended application on January 2, 2015. The tenant testified that, on January 27, 2015, the landlord mailed her a cheque in the amount of \$333.75. The tenant testified that she had agreed verbally (not in writing) to a reduction in her security deposit for carpet cleaning in the amount of \$78.75.

The tenant submitted that the landlord was required to return her agreed-upon portion of the security deposit by November 16, 2014. She submitted that she had met all her tenant responsibilities and acted reasonably in agreeing to a deduction in her security deposit amount for carpet cleaning. She testified that she sent numerous messages and made contact with the property manager on several occasions requesting return of her deposit. She testified that she waited for approximately a month and a half beyond the date that the landlord was required to return her deposit before she filed for dispute resolution. The landlord made no application to retain the security deposit. The landlord did not attend this hearing to present any evidence however the tenant testified that the landlord did return the tenant's security deposit with a deduction on January 27, 2015. (3 months after the tenant vacated the rental unit and provided her forwarding address).

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the

landlord had 15 days after November 1, 2014, when the tenant provided her forwarding address, to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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.” The tenant testified that she did not give the landlords written authorization at the end of this tenancy to retain any portion of her security deposit. However, she acknowledged that she agreed verbally to allow the landlords to retain \$78.75 towards carpet cleaning.

The tenant seeks return of double the original value of her security deposit to address the landlord’s failure to take action against the security deposit in accordance with the *Act*. The undisputed sworn evidence of the tenant is that the landlord did not obtain written authorization to retain the tenant’s security deposit. The landlord made no application for dispute resolution to retain all or a portion of the tenant’s security deposit. As of January 27, 2015, the tenant received her security deposit from the landlord with a deduction for carpet cleaning. The tenant does not dispute this deduction but submits that she is entitled to recover an amount equivalent to her security deposit as a result of the landlord’s failure to comply with the provisions of section 38 of the *Act*.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch’s Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

The tenant did not specifically waive the doubling of the deposit. In fact, she followed the procedure to amend her application and served the landlord with that amended

application seeking an amount equal to her original security deposit, given the landlord's failure to act prior to her application. Other factors to consider in these circumstances are the fact that the landlord did not file any claim for the security deposit in the required amount of time. The landlord did not attend this hearing. The landlord did not obtain written agreement to retain *any* portion of the tenant's security deposit. The tenant has been candid in her testimony that she agreed to compensate for failure to clean the carpets. Even in circumstances where a landlord may have a valid claim, failure to take action as required under the *Act* prevents the landlord from retaining the tenant's security deposit beyond 15 days.

Section 38(6) of the *Act* states,

(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

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days as required by section 38(1) of the *Act*. I find that the fact that the landlord did not return the tenant's security deposit within the 15 days as required is the relevant and determining factor in the tenant's application. This provision of the *Act* is created to maintain procedural fairness and provides very clear, specific obligations of a landlord with respect to a tenant's security deposit. The landlord holds the tenant's security deposit in trust, and is obliged to pay interest on that deposit when returned to the tenant. The landlord is also required to act swiftly at the end of the tenancy with respect to any claim on the deposit.

As the landlord/respondent in this matter did not act swiftly in returning the applicable portion of the tenant's security deposit, I find that the tenant is eligible to recover an amount equal to the value of her security deposit from the landlord.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with any interest calculated less the amount that the landlord has returned to the tenant and the amount the tenant agreed to provide for carpet cleaning. No interest is payable for this deposit over the time period it was held by the landlord.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms;

Item	Amount
Return of Security Deposit	\$412.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	412.50
LESS Amount returned by Landlord on Jan 27, 2015	-333.75
LESS Amount agreed for carpet cleaning	-78.75
Recovery of Filing Fee	50.00
Total Monetary Order	\$462.50

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 17, 2015

Residential Tenancy Branch

