



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for a monetary order for the return of her security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the landlord's representative participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

Background and Evidence

The rental unit is an apartment in Richmond. The tenancy began on October 1, 2013 for a one year fixed term. Monthly rent was \$1,625.00 payable on first day of each month. The tenant paid a security deposit of \$812.50 and a pet deposit of \$812.50 on September 26, 2013.

The tenant moved out of the rental unit on March 31, 2015. The tenant said that she participated in a move-out inspection and there was no basis for any deductions from the deposits. The tenant said that she received a text message from the landlord stating that \$100.00 would be withheld from her deposit on account of a move-out fee charged by the strata corporation. The tenant testified that she received a cheque from the landlord for \$1,525.00 on April 20, 2015. The cheque was dated April 15, 2015. The tenant said that she deposited the cheque, but it could not be cashed because it was unsigned.

On April 29, 2015 the tenant filed an application for dispute resolution seeking payment of double the amount of her deposits. Without informing the landlord that she had filed

an application for dispute resolution, on Friday, May 1, 2015, the tenant sent a text message to the landlord's representative wherein she said:

The deposit cheque you have mailed me has bounced at the bank as there was no signature. Please re-issue the cheque ASAP.

thank you,

The landlord issued a replacement cheque to the tenant on Monday, May 4, 2015 in the amount of \$1,625.00, which was the full amount of the security and pet deposits. The tenant received and cashed the cheque.

The tenant took the position at the hearing that the landlord's payment was not made within 15 days of the date that the tenancy ended and despite the fact that she received the full payment on May 4th the tenant contended that she was entitled to double the amount pursuant to the provisions of section 38 (6) of the *Residential Tenancy Act* because the landlord failed to comply with the provisions of that section.

The landlord's representative testified that the landlord sent a cheque to the tenant on April 15, 2015, which was within the 15 day period; he said that it was an inadvertent mistake that the cheque was not signed and it should have been patently obvious to the tenant, who is a sophisticated accountant, that the cheque could not be cashed without a signature. He said that had the tenant called him when she received the cheque, the problem would have been immediately rectified. The landlord's representative noted that the landlord issued the tenant a replacement cheque in the full amount of the deposits even though the issue with respect to the strata fee had not yet been resolved. The landlord's representative doubted that the tenant was unaware that the cheque was not signed when she presented it for payment.

The landlord's representative also submitted that the tenant was in breach of her obligations because she failed to provide the landlord with proper written notice to end the tenancy.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the

end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The landlord sent a cheque to the tenant within 15 days of the end of tenancy as required by section 38, but the cheque was not in the full amount of the deposit and the landlord did not have the tenant's written authority to make a deduction from the deposit., Leaving aside the fact that the cheque was inadvertently unsigned, I find that the landlord failed to refund the tenant's full security deposit within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. The provisions of section 38 of the *Act* are mandatory and I have no discretion to avoid the application of the section, even though the nature of the breach and its consequences for the tenant were trivial.

Conclusion

The tenant has received payment of the sum of \$1,625.00. Pursuant to section 38(6) I award her the further sum of \$1,625.00. I do have discretion with respect to the awarding of costs; because the tenant has insisted upon the strict application of the section despite the trivial nature of the breach and because she has received an award far exceeding the amount of any actual damage, I decline to award a filing fee for this application. I grant the tenant a monetary order against the landlord in the amount of \$1,625.00. This order may be registered in the Small Claims 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: November 03, 2015

Residential Tenancy Branch

