



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POPULACE HOLDING LTD. DBA: WILLOW POINT REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD RPP 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 his personal property, for the return of double his security deposit, plus the recovery of the cost of the filing fee.

The tenant and an agent for the landlord (the "agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the testimony of the parties is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary and digital evidence.

Settlement Agreement

At the outset of the hearing, the parties reached a mutually settled agreement regarding the return of the tenant's personal property; namely, a mountain bike. The agent agreed to arrange the delivery of the tenant's mountain bike to the tenant's address by **July 15, 2016** at the expense of the landlord. As a result, the parties are ordered to comply with the terms of their mutually settled agreement in accordance with section 63 of the *Act*. Given the above, the portion of the tenant's application related to the return of his personal property will not be discussed further in this Decision.

Issue to be Decided

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

Background and Evidence

The parties agreed that a fixed term tenancy began on October 1, 2015 and was scheduled to revert to a month to month tenancy after a period of six months. The tenant vacated the rental unit on October 30, 2015. Monthly rent of \$850.00 was due on the first day of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy, of which the landlord returned \$320.00 to the tenant.

The parties agreed that the tenant provided his written forwarding address to the landlord on October 30, 2015 on the outgoing condition inspection report. The landlord returned \$320.00 of the tenant's security deposit, which resulted in the landlord retaining \$105.00 without the tenant's consent and without having applied towards the tenant's security deposit under the *Act*.

Analysis

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

Tenant's claim for the return of double the security deposit and pet damage deposit – I accept that the tenancy ended on October 30, 2015 when the tenant vacated the rental unit. 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, there is no dispute that the tenant provided his forwarding address in writing to the landlord on the condition inspection report dated October 30, 2015. The agent confirmed during the hearing that the landlord has not applied to retain the tenant's security deposit. Both parties confirmed that \$320.00 of the tenant's security deposit was returned to the tenant by the landlord.

Given the above, pursuant to section 38 of the *Act*, the landlord had to return the full security deposit to the tenant or file an application to claim towards the deposits within 15 days of receiving the tenant's forwarding address, which the landlord failed to do. Based on the above, I find the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenant having received the forwarding address of the tenant in writing on October 30, 2015 and taking in account that the landlord did not claim towards the tenant's security deposit or have written permission from the tenant to retain \$105.00. Therefore, I find the tenant is entitled to the return of double his original security deposit of \$425.00 for a total of \$850.00. I deduct from that amount the \$320.00 portion paid by the landlord to the tenant already which results in a total of \$530.00 owing by the landlord to the tenant.

As the tenant was successful with their application, I grant the tenant the recovery of his 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 **\$580.00**, comprised of \$850.00 for the doubled security deposit, plus the recovery of the \$50.00 filing fee, less the \$320.00 portion of the security deposit already returned to the tenant by the landlord. Therefore, I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$580.00.

Conclusion

The tenant's application is successful.

The tenant has established a total monetary claim in the amount of \$580.00 as described above and is granted a monetary order pursuant to section 67 of the *Act* 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: July 6, 2016

Residential Tenancy Branch