



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 723549 ALBERTA LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought return of the security deposit paid and recovery of the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double her security deposit paid?
2. Should the Tenant recover the filing fee paid?

Background and Evidence

The Tenant, M.S., testified that the tenancy began July 2, 2015. She confirmed that her daughter, G.C., the other named tenant on the tenancy agreement moved in and the Tenant, M.S. moved in a week later. M.S. confirmed that G.C. was aware of the

application M.S. made to recover the security deposit. The Tenants paid a security deposit of \$387.50.

M.S. testified that the Landlord did not conduct a move in condition inspection report in accordance with the *Residential Tenancy Act* and the Regulations.

M.S. testified that she moved out of the rental unit on November 30, 2015. She confirmed that the Landlord also failed to conduct a move-out condition inspection report in accordance with the *Residential Tenancy Act* and the Regulations.

M.S. testified that she provided the Landlord with her forwarding address in writing on December 28, 2015. M.S. stated that she went to the rental building on December 28, 2015 and slipped a copy of her forwarding address and a key to the rental unit door under the Property Manager's door, as she was directed by the Property Manager to do.

The Tenant's spouse, R.P., also testified on behalf of the Tenant. He confirmed he did not live in the rental unit, but that he accompanied the Tenant to the rental building on December 28, 2015 and witnessed her place a key and her written forwarding address under the Property Manager's door.

W.A. testified on behalf of the numbered company and confirmed that he is the president of the company.

At the conclusion of the Tenant's case, W.A. requested an adjournment. He stated he required more time to call G.C., the other Tenant named on the tenancy agreement, as well as more time to make an application to retain the Tenant's security deposit.

The Tenant's Application was filed on February 25, 2016.

As noted, the Tenant, M.S., confirmed that G.C. is her daughter and is aware of the application.

The evidence confirms that the Landlord received the Tenant's forwarding address on December 28, 2015.

I accept the evidence of the Tenant, M.S. that her daughter, G.C., is aware of the hearing. I further accept her evidence that she had authority and instructions to act on behalf of G.C. The time for the Landlord to make an application to retain the deposit was 15 days from that date.

Rules 1.1 and 7.9 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objections set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

Based on the foregoing I declined the Landlord's request to adjourn these proceedings.

I find, based on the evidence before me, that there is no need to adjourn the proceedings to call the other Tenant. I accept M.S.'s testimony that the other Tenant is her daughter and is aware of the proceedings and has authorized M.S. to appear on her behalf.

I further find that the Landlord's request for an adjournment will prevent an efficient resolution of this matter. I note that the Landlord has had notice of these proceedings since February 2016, and therefore he has had considerable time to make his own application. In failing to file for dispute resolution I find that any need he may have for an adjournment arises out of either his intentional choice or neglect not to apply sooner.

Finally, I find based on the evidence before me that the Tenant would be significantly prejudiced as she has already waited eight months for resolution of her matter.

D.V. also testified on behalf of the Landlord. She confirmed she completed the Residential Tenancy Agreement on behalf of the Landlord in July of 2015. She also confirmed that the Tenants paid a security deposit in the amount of \$387.50.

D.V. testified that she did not complete a move-in Condition Inspection Report in accordance with the *Residential Tenancy Act* or the Regulations.

D.V. confirmed that she received the Tenants forwarding address in writing on December 28, 2015 and that she did not make an application for Dispute Resolution within 15 days of receipt of the Tenant's written forwarding address.

Analysis

The Tenant makes an application for return of double her security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

- (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) 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, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].
- (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 above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follow.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

Accordingly, I find that the Landlord has breached section 38 of the *Act*.

The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the

Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$875.00**, comprised of double the security deposit (\$387.50 x 2) and the \$100.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the small claims division of the Provincial Court and enforced as an Order of that court.

Dated: October 06, 2016

Residential Tenancy Branch

