



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OKANAGAN CUSTOM CUT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, OLC

Introduction

This hearing dealt with a tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit; and
- an order requiring the landlord to comply with the *Act*, regulations or tenancy agreement.

The owner of the corporation (the "landlord") and the tenant appeared at the teleconference hearing and gave affirmed testimony. The tenant appeared with an advocate present. During the hearing the landlord and the tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenant indicated that the tenant's claim for an order requiring the landlord to comply with the *Act*, regulations or tenancy agreement arises out of complaints about disturbances to the tenant's quiet enjoyment of their rental unit. The tenant indicated that they moved out of the rental unit on November 29, 2016. Therefore, I dismiss this claim as it is unnecessary due to the tenancy having ended.

Issue to be Decided

- Is the tenant entitled to a monetary order for the return of double the security deposit?

Background and Evidence

The undisputed evidence established that the tenant entered into a month to month tenancy starting on January 7, 2006. The tenancy ended on November 29, 2016 by the tenant giving notice. The current landlord assumed responsibility for the rental unit starting February 1, 2014 by purchasing the property from the previous owners. The tenant testified that she provided a security deposit in the amount of \$400.00 to the previous owners on January 6, 2006. The tenant gave the landlord written notice of her forwarding address requesting the deposit be returned on November 29, 2016.

The landlord testified that no mention was made by the previous owners about a security deposit when the property was purchased. The landlord also testified he did not collect the tenant's security deposit from the previous owner. The landlord testified that when the tenant requested the return of the deposit, the landlord sought out the previous owners asking for the return of the tenant's security deposit.

The landlord testified that the previous owners withheld \$50.00 and only returned the amount of \$350.00 which the landlord passed onto the tenant. The landlord also testified that the deduction for the \$50.00 was a joint decision between the landlord and the previous owner. According to the landlord, the \$50.00 deduction was to recover his cost of removing items left behind by the tenant including the dump fees.

The evidence established that the landlord sent the tenant \$350.00 on December 6, 2016. \$50.00 of the original security deposit amount has been withheld.

The landlord argued that he isn't responsible for the tenant's security deposit as it was paid to the previous owners and he didn't receive the benefit of it.

The tenant is seeking double the security deposit amount in the sum \$800.00 less \$350.00, the amount that has already been returned.

Analysis

Based on the undisputed evidence and testimony, and on the balance of probabilities, I find the following.

Pursuant to Section 93 of the *Act*, the obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations. Therefore, I do not accept the landlord's argument and I find

that the landlord is liable for the tenant's security deposit which became the landlord's obligation when the property was purchased from the previous landlord.

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) of the *Act*, 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.

Policy Guideline #17 of the Residential Tenancy Branch's Policy Guidelines states that unless the tenant has specifically waived the doubling of the deposit, 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.

I find that the tenant sent her forwarding address in writing to the landlord on the same day as she vacated the rental unit, November 29, 2016. Therefore, November 29, 2016 is the date of the triggering event. Therefore, I find that the landlord had 15 days after November 29, 2016 to return the security deposit or file an Application for Dispute Resolution to make a claim to retain the security deposit.

Based on the 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. The evidence is clear that she has not waived her right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. 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 interest calculated on the original amount only. Interest is payable in the amount of \$14.12.

As the tenant's application is successful, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Based on the foregoing, I find that the tenant is entitled to a total monetary order in the amount of \$564.12 as follows:

| | |
|--|------------------|
| Double Security Deposit plus interest (\$400.00 x 2 + \$14.12) | \$ 814.12 |
| Less Security Deposit Returned | \$ 350.00 |
| Filing Fee | \$ 100.00 |
| Total Monetary Order | \$ 564.12 |

Conclusion

I dismiss the tenant's claim for an order requiring the landlord to comply with the *Act*, regulations or tenancy agreement as it is unnecessary.

Pursuant to section 67 of the *Act*, the tenant is granted a monetary Order in the amount of \$564.12 for double the security deposit, and the filing fee, less the portion already returned, which must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it 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: March 6, 2017

Residential Tenancy Branch