



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARKERSON BC WHOLESALE LUMBER (1966) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order 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. The parties gave affirmed testimony, were provided the opportunity to present evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed that they had the opportunity to review the documentary evidence served upon them prior to the hearing.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under section 38 of the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that the tenant paid a security deposit of \$875.00 at the start of the tenancy in September 2014. The agents confirmed that the landlord has not returned the tenant's security deposit or claimed against the security deposit.

The tenant testified that he provided the landlord with his written forwarding address on August 31, 2016 which was confirmed by the agent as the landlord provided a copy of the tenant's written forwarding address in evidence. The parties confirmed that the

tenant did not provide written permission to the landlord to retain any portion of his \$875.00 security deposit and that the landlord continues to hold the tenant's security deposit. The tenant is seeking double the return of his security deposit in accordance with section 38 of the *Act* plus the recovery of the cost of the filing fee.

Analysis

Based on the above, the documentary evidence and the testimony before me and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

Firstly, the parties agreed that the tenant did not provide the landlord with written permission to retain any portion of the tenant's \$875.00 security deposit which has accrued no interest to date. Secondly, the landlord failed to apply for dispute resolution, within 15 days of August 31, 2016, which is the date the tenancy ended and the date the tenant's written forwarding address was provided to the landlord. Section 38 of the *Act* applies and 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]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to apply for dispute resolution or return the tenant's security deposit in full 15 days after August 31, 2016, the date the tenancy ended and the date the landlord received the tenant's written forwarding address.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days of August 31, 2016 as required by the *Act*.

Section 38(6) of the *Act* 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. As a result, I grant the tenant **\$1,750.00** pursuant to section 67 of the *Act* which is double the original security deposit amount of \$875.00.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

I find the tenant has established a total monetary claim of **\$1,850.00** comprised of \$1,750.00 for the doubled security deposit, plus \$100.00 for the recovery of the cost of the filing fee. Based on the above and pursuant to section 67 of the *Act*, I grant the tenant a total monetary order in the amount of **\$1,850.00**.

I ORDER the landlord to comply with section 38 of the *Act* in the future.

Conclusion

The tenant's application is fully successful.

The landlord has breached section 38 of the *Act* and has been ordered to comply with 38 of the *Act* in the future.

The tenant has been granted a monetary order in the amount of \$1,850.00 comprised of double the security deposit of \$875.00 plus the recovery of the cost of the \$100.00 filing

fee. The monetary 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: April 19, 2017

Residential Tenancy Branch