



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTECTION PROPERTY MARKETING & MANAGEMENT REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of a part or all of his security deposit and to recover 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.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act* and if so, in what amount?

Background and Evidence

The tenancy began on February 1, 2015 and ended on August 3, 2016. The parties agreed that the tenant originally paid an \$1,800.00 security deposit when monthly rent was \$3,600.00 however later in the tenancy, the parties agreed that the tenant would not occupy the basement which resulted in the tenant's monthly rent decreasing to \$2,500.00 and at that time, the landlord returned \$550.00 of the security deposit which left a security deposit of \$1,250.00 at the end of the tenancy. The landlord continues to hold the tenant's security deposit of \$1,250.00 which has accrued no interest to date.

The parties confirmed that the tenant provided his written forwarding address on the outgoing condition inspection report dated August 3, 2016. The agent testified that the tenant owes \$498.75 for unpaid utilities which the tenant eventually agreed to during the hearing after first being vague in responding to the unpaid utilities statement by the agent and claiming that he only agreed to \$150.00 being deducted.

The tenant confirmed that he had his paperwork stolen and as a result did not have his paperwork to refer to during the hearing. The agent confirmed that the landlord has not submitted an application to claim against the tenant's security deposit.

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*.

There was no evidence before me to show that the landlord applied for dispute resolution, within 15 days of August 3, 2016 the date confirmed by the parties as the date that the tenant provided his written forwarding address on the outgoing condition inspection report. I note that the end of tenancy date is the same date as the date the tenant provided his written forwarding address 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 3, 2016, 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 a specific amount from the security deposit and did not return the security deposit to the tenant within 15 days of August 3, 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 find the tenant has established a claim for **\$2,500.00** pursuant to section 67 of the *Act* which is double the original security deposit amount of \$1,250.00. As the tenant's application had merit, I also grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** for a total monetary claim of **\$2,600.00**.

Given the testimony and documentary evidence before me regarding the utilities I am also satisfied that the tenant agreed to pay the unpaid utilities and that while the amount may not have been specified previously, I am satisfied that the amount of \$498.75 is owing from the total tenant's claim based on the evidence before me which reduces the tenant's claim to **\$2,101.25**. Therefore, I order a monetary order in that amount which is owing by the landlord to the tenant.

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

Conclusion

The tenant's application is partially 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 \$2,101.25 as described above. Should the landlord fail to immediately pay that amount to the tenant, 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: June 28, 2017

Residential Tenancy Branch