



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0949123 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "application") under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for the return of double her security deposit.

The tenant and an agent for the landlord who is a numbered company (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.

Preliminary and Procedural Matter

At the outset of the hearing, the agent was informed that although he submitted a monetary breakdown in the landlord's evidence, that the Rules of Procedure do not permit the respondent to make an application for monetary compensation through the applicant's Application for Dispute Resolution. As a result, the agent was advised that should the agent wish to submit a monetary claim that the agent would require their own application that will be assigned a file number and to which a filing fee would be required. The agent confirmed that he was not attempting to make a monetary claim through the tenant's application but that he wanted to provide evidence that there were damage/costs after the tenant vacated the rental unit. I have not considered the respondent's evidence related to the damages/costs in case the landlord decides to make a monetary claim within the legislated timeline under the *Act*.

Issue to be Decided

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

Background and Evidence

The parties agreed that the tenant paid a \$400.00 security deposit at the start of the tenancy in March of 2009. The agent affirmed that he received the tenant's written forwarding address by the end of November of 2016. The tenant affirmed that she provided her written forwarding address dated September 20, 2016 to the landlord by the end of September 2016. The agent confirmed that he did not have the tenant's written permission to deduct any amount from the \$400.00 security deposit. The agent also confirmed that the landlord did not file an application to claim towards the tenant's security deposit since being served with the tenant's written forwarding address in 2016.

Based on the above, there is no dispute that the landlord was served with the tenant's written forwarding address at the very latest by the end of November 2016, although the parties did not agree on the month in 2016. The agent also confirmed that the landlord did not apply to claim against the tenant's security deposit and did not have the written permission of the tenant to retain any amount from the tenant's \$400.00 security deposit. The landlord continues to hold the tenant's security deposit of \$400.00.

Analysis

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

Firstly, the landlord confirmed that he received the tenant's written forwarding address by the end of November 2016. Secondly, I find the landlord did not file a claim against the tenant's security and did not have the written permission of the tenant to retain any amount of the security deposit. 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 claiming against the tenant's security deposit or return the tenant's security deposit in full within 15 days after the end of November 2016, the date I will use in the interest of fairness as the parties could not agree on the month when the written forwarding address was served on the landlord.

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 the end of November 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 **\$800.00** pursuant to section 67 of the *Act* which is double the original security deposit amount of \$400.00.

Based on the above and pursuant to section 67 of the *Act*, I grant the tenant a total monetary order in the amount of **\$800.00**.

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 \$800.00 comprised of double the security deposit of \$400.00. 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: August 28, 2017

Residential Tenancy Branch