



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGLEY LIONS SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD OLC FF

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") for a monetary order double the return of her security deposit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the tenant was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant testified that the Notice of Hearing, Application and documentary evidence were served on K.G. who is an agent for the corporate landlord on March 29, 2017 at approximately 1:30 p.m. The tenant affirmed that she also had a witness with her, J.H. The tenant also confirmed that since being served with the Notice of Hearing and other documents, the landlord returned the entire amount of her claim, with the exception of the \$100.00 filing fee. Based on the above, I accept that the landlord agent K.G. was served on March 29, 2017 which is supported by the fact that the tenant received the full amount of her claim with the exception of the \$100.00 filing fee. I find that this matter is unopposed by the landlord as a result.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act* for the recovery of the cost of the filing fee?
- Has the tenant provided sufficient evidence that supports that the landlord should be directed to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on February 1, 2012. The tenant paid a security deposit of \$225.00 at the start of the tenancy.

The tenant testified that she did not give the landlord written permission to retain any amount of her security deposit and that the landlord did not have any authority to retain any portion of her security deposit and that the landlord did not submit an application to claim against her security deposit.

Given the above, the tenant is seeking the recovery of the cost of the filing fee of \$100.00. The tenant testified that she provided her written forwarding address on the move-out condition inspection report dated January 31, 2017 (the "CIR") and that none of the deductions listed on the copy of the CIR sent to her were listed when she signed the CIR. According to the tenant, the landlord eventually sent the CIR that had deductions added without her consent with a \$63.00 cheque which the tenant cashed.

The tenant claimed \$387.00 comprised of double the return of her \$225.00 security deposit which would be \$450.00 less the amount returned by the landlord of \$63.00. The tenant is also seeking the return of her \$100.00 filing fee. The tenant affirmed that on July 25, 2017 she received a cheque from the landlord dated July 17, 2017 in the amount of \$387.00. The tenant stated that the amount was missing the recovery of the cost of her filing fee.

Analysis

Based on the undisputed documentary evidence and unopposed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

As the landlord was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the landlord.

Section 38 of the *Act* Section 38 of the *Act* 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.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

[My emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by only returning \$63.00 of the tenant's \$225.00 security deposit and that by returning the amount claimed by the tenant a month prior to the scheduled hearing does not change the fact that the landlord violated the *Act*.

Therefore, I find that the tenant's application had merit and that pursuant to section 72 of the *Act* the tenant is entitled to the return of her \$100.00 filing fee. As a result, I award the tenant **\$100.00** from the landlord for the recovery of the cost her filing fee.

I also find it necessary to caution the landlord from violating section 38 of the *Act* in the future and note that the landlord is a senior citizen housing society. Therefore, **I ORDER** the landlord to comply with section 38 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act* as I find the landlord had no authority to retain any amount of the tenant's security deposit as the landlord did not have the written permission of the tenant and did not file an application for dispute resolution claiming towards the tenant's security deposit. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is **\$5,000.00** per day and may be imposed for each day the contravention or failure continues.

Conclusion

The tenant's application is successful.

The tenant has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of \$100.00. Should the landlord fail to immediately pay the tenant \$100.00, the tenant must serve the landlord with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The landlord is a senior citizen housing society and has been ordered to comply with section 38 of the *Act* in the future or could face a recommendation for an administrative penalty under the *Act* as described above.

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