



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTIES
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 ("application") under the *Residential Tenancy Act* ("Act"). The tenant applied for a monetary order for the return of her security deposit.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the teleconference hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The tenant stated that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on August 5, 2017 and submitted a tracking number in evidence through her testimony which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking information the registered mail package was mailed on August 5, 2017 and required a signature. The tenant testified that the registered mail package was addressed to the landlord at the landlord's service address provided on the outgoing condition inspection report which was submitted in evidence. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I find the landlord was deemed served on August 10, 2017, which five days after the registered mail package was mailed to the landlord. As the landlord did not attend the teleconference hearing, the hearing proceeded as an unopposed application.

Preliminary and Procedural Matters

The tenant provided her email address at the outset of the hearing which was confirmed by the undersigned arbitrator. The tenant confirmed her understanding that the decision would be emailed to her and that the landlord would have the decision sent by regular mail.

The tenant was asked if she was entitled to double the return of her security deposit under section 38 of the *Act* if she was waiving her right to double her security deposit as she had only

applied for the return of her original security deposit back of \$245.00. The amount of \$245.00 was reached by the tenant deducting \$150.00 for carpet cleaning costs which she said she agreed with the landlord in writing could be deducted from her original security deposit of \$395.00. The tenant testified that if she was entitled to double her security deposit under the *Act* that she was not waiving her right to double the amount of the \$245.00.

In addition to the above, during the hearing the tenant requested to remove the name of the landlord agent resulting in the company landlord name as the sole respondent. This amendment was permitted pursuant to section 64(3) of the *Act*.

Issue to be Decided

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

Background and Evidence

The tenant testified that there was a written tenancy agreement but that it was not submitted in evidence. The tenant stated that the tenancy began on May 26, 2016 and that she vacated the rental unit on May 31, 2017.

The tenant referred to the outgoing condition inspection report dated May 31, 2017 which included her written forwarding address and the tenant's agreement that \$150.00 could be deducted for carpet cleaning costs by the landlord from her \$395.00 security deposit, leaving her security deposit to be returned to her in the amount of \$245.00.

The tenant stated that at no point has the landlord returned her \$245.00 security deposit balance or served an application on her claiming against her security deposit balance.

Analysis

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

Firstly, I note that the landlord was deemed served with the Notice of Hearing, application and documentary evidence and did not attend the hearing which I find results in this tenant's application being unopposed by the landlord. While there was evidence before me to support that the tenant had agreed, in writing, that the landlord could retain \$150.00 of the tenant's \$395.00 security deposit, which has accrued no interest to date, there was no evidence before me to show that the landlord applied for dispute resolution, within 15 days of May 31, 2017, the date the landlord was provided with the tenant's written forwarding address on the outgoing condition inspection report and the date the tenancy ended. In addition, I accept the undisputed testimony that the tenant has not received any of her \$245.00 remaining security deposit balance from 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 balance of \$245.00 in full 15 days after May 31, 2017, the date the landlord received the tenant's written forwarding address in writing and the tenancy ended.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the authority 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 more than the \$150.00 amount from the original \$395.00 security deposit which left a security deposit balance of \$245.00 owing to the tenant, and that the landlord did not return the security deposit to the tenant within 15 days of May 31, 2017 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 **\$490.00** which is double the security deposit balance of \$245.00.

Based on the above and pursuant to section 67 of the *Act*, I grant the tenant a total monetary order in the amount of **\$490.00**.

As the landlord has breached the *Act*, I make the following order against the landlord.

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*. The maximum penalty for an administrative penalty under section 87.4 of the *Act* is up to \$5,000.00 per day.

Conclusion

The tenant's application is fully successful.

The landlord has breached section 38 of the *Act* and has been ordered to comply with section 38 of the *Act* in the future. The landlord has also been cautioned that failure to comply with section 38 of the *Act* in the future could lead to a recommendation for an administrative penalty under the *Act* which carries a maximum penalty of up to \$5,000.00 per day.

The tenant has been granted a monetary order in the amount of \$490.00 comprised of double the security deposit balance of \$245.00. 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: January 31, 2018

Residential Tenancy Branch