



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 396323 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On May 14, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to section 38 of the *Act* and seeking to recover the filing fee pursuant to section 72 of the *Act*.

The Tenant and Landlord attended the hearing and all parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package, by registered mail, to the Landlord and the Landlord confirmed receipt of this package. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double her security deposit pursuant to section 38 of the *Act*?
- Is the Tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Landlord advised that her evidence package was served to the Tenant by registered mail on June 18, 2018 and the Tenant confirmed receipt of this package. However, the Landlord's evidence did not meet the service requirements of Rule 3.15 of the Rules of Procedure as it was late, and the Tenant stated that she did not have enough time to review and respond to the Landlord's evidence. As such, the Landlord's evidence was not considered; however, she was still able to provide testimony with respect to this evidence.

The Landlord stated that the tenancy started on November 15, 2015 as a fixed term tenancy and that the tenancy ended on January 31, 2018. Rent was originally established at \$900.00 per month, due on the first day of each month. A security deposit of \$450.00 was also paid. The Tenant confirmed these details.

The Tenant submitted that she provided a forwarding address in writing to the Landlord on the move out inspection report on January 31, 2018 and the Landlord confirmed receipt of this. The Tenant stated that the Landlord sent her a registered mail letter on February 9, 2018 outlining the reasons and amounts she was deducting from the Tenant's security deposit. The Tenant advised that the Landlord also included a cheque in the amount of \$188.00 which was the security deposit less their deductions.

The Landlord confirmed these details and made several references to her evidence to justify why this was done. The Landlord stated that she did not make an Application for Dispute Resolution for these deficiencies as she did not realize she was required to. The Landlord also noted that she did not have the Tenant's written consent to keep any portion of the deposit.

Analysis

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on January 31, 2018. As the Tenant vacated the rental unit on this date as well, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full within 15 days of January 31, 2018 or make an application to claim against the deposit.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

There is no provision in the Act which allows the Landlord to retain a portion of the deposit without authority under the Act or having the Tenant's written consent. As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act* and breached the requirements of section 38, I find that the Tenant has established a claim for a Monetary Order amounting to double the original security deposit. Under these provisions, I am awarding the Tenant \$900.00; however, as the Tenant has received a cheque of \$188.00, I am reducing this monetary award to \$712.00. As such, I grant the Tenant a Monetary Order in the amount of **\$712.00** in full satisfaction of this claim.

As the Tenant was successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

With respect to the Landlord's references to her claims for compensation due to cleaning, repairs, and damage to the rental unit, these issues were not considered in the Application before me as the Landlord did not make her own Application to have these claims heard. As such, these claims remain open for the Landlord to file against the Tenant if she chooses to do so.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$812.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision 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 29, 2018

Residential Tenancy Branch