



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent E.G. attended on behalf of the corporate landlord.

As both parties were present, service of documents was confirmed. The tenant testified that the landlord was served with her application for dispute resolution and evidence by Canada Post registered mail on January 25, 2018, which was confirmed by the landlord's agent. The landlord's agent confirmed that no evidence was submitted by the corporate landlord in this matter. Based on the undisputed testimonies of the parties, I find that the notice of this hearing was served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment of the Tenant's Application for Dispute Resolution

The tenant's original Application for Dispute Resolution was submitted on January 18, 2018 and sought the return of her security deposit (less authorized deductions) in the amount of \$452.50 and an equivalent amount as statutory compensation pursuant to section 38 of the *Act* for the landlord's failure to repay the security deposit with the provided time limits. On January 25, 2018, the tenant submitted a request to amend her original Application for Dispute Resolution as she had received the return of her security

deposit from the landlord. Therefore, the tenant had reduced her claim to seek only the statutory compensation provided under section 38 of the Act, which in this case would be \$452.50 and the recovery of the \$100.00 filing fee paid for this application. As the tenant's amendment request reduced the tenant's claim, and therefore was not prejudicial to the landlord, I granted the tenant's amendment to her application pursuant to my authority under section 64(3)(c) of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to the value of the security deposit, less authorized deductions, because of the landlord's failure to comply with section 38 of the Act?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenant submitted a copy of the written tenancy agreement into documentary evidence. Both parties agreed to the following details pertaining to the tenancy:

- This month-to-month tenancy began on October 1, 2016.
- Monthly rent of \$1,217.00 was payable in advance on the last day of the month.
- The tenant paid a security deposit of \$608.50 at the beginning of the tenancy.
- The tenant gave written notice on November 30, 2017 to end her tenancy on December 31, 2017.
- The tenant decided to move out early and returned the rental unit keys and provided vacant possession of the rental unit to the landlord on December 17, 2017.
- A condition inspection of the rental unit was completed by the landlord and the tenant at the beginning of the tenancy. At the end of the tenancy, the tenant participated in the move-out condition inspection with the resident manager, signed the condition inspection report and signed the security deposit refund form on December 17, 2017. The tenant provided her forwarding address for the return of the security deposit on these forms.

- In signing the above-noted forms, the tenant authorized deductions to the security deposit for cleaning costs, resulting in a balance of the security deposit to be repaid to the tenant of \$452.50.
- The tenant expressed interest in recouping rent paid from December 17 to 31, 2017 in the event the landlord was able to rent the unit to another tenant prior to January 1, 2018.
- The landlord was not able to rent the unit prior to January 1, 2018 and so the tenant was unable to recoup any rent.
- The landlord was unsure if any specific updates or renovations were done to the rental unit between December 17 to 31, 2017 in preparation for a new tenant.
- The landlord did acknowledge that some updates are usually done when a rental unit “turns over” however, she stated this work is usually completed quickly.

The landlord’s agent testified that the all the “check-out” paperwork was completed by the resident manager and the tenant on December 17, 2017, however the resident manager failed to forward this paperwork to the corporate landlord’s accounting office until the end of December 2017. Therefore, the tenant’s security deposit return cheque was not processed and sent out until the end of December 2017.

Further to this, the landlord’s agent testified that there was an issue with the initial mailing of the security deposit cheque to the tenant. The stamp fell off the envelope and as a result the cheque was returned to the landlord and had to be re-sent. The landlord’s agent was not sure of the specific date that the cheque was re-sent to the tenant.

The tenant claimed that on January 15, 2018, she contacted the landlord as she had not yet received the return of the remainder of the security deposit. The tenant testified that she was told by the landlord that the cheque had been mailed on January 12, 2018. The tenant filed this application for dispute resolution on January 18, 2018 as she had still not received the return of her security deposit. The tenant stated that on January 19, 2018, she received the return of the remainder of the security deposit, \$452.50, by cheque from the landlord.

The tenant submitted into evidence photographs of the cheque and the envelope in which it arrived, to support her testimony.

I advised both parties that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit

unless the tenant expressly waives entitlement. Accordingly, I have considered whether the tenant is entitled to the return of double the amount of their deposit in making this decision.

Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

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.

In this matter, the tenant returned the keys and provided vacant possession of the rental unit to the landlord on December 17, 2017. On this same date, the tenant provided the landlord with her forwarding address. Therefore, the landlord had 15 days from December 17, 2017 to either return the security deposit to the tenant in full, apply for arbitration for an order to retain the security deposit, or obtain written authorization from the tenant to retain a portion of the security deposit and return the remainder to the tenant.

It was confirmed by both parties that the tenant agreed in writing that the landlord could retain \$156.00 of the security deposit in satisfaction of cleaning charges, and that the rest would be returned to the tenant.

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 with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep all of the security deposit, and only had agreement from the tenant to keep \$156.00 of the security deposit.

Therefore, I find that the landlord was required to return the remainder of the tenant's security deposit in the amount of \$452.50 within 15 days of December 17, 2017, which was the date the tenancy ended and also the date when the landlord received the tenant's forwarding address.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to the value of the amount of the security deposit the landlord failed to address in accordance with section 38 of the *Act*, with any interest calculated on the original amount only. No interest is payable for this period.

The amount of compensation of \$452.50 owed to the tenant is calculated as follows:

Original security deposit paid = \$608.50

Amount tenant agreed that landlord could withhold = \$156.00

Amount of security deposit landlord failed to return per section 38 of the *Act* = \$452.50

Doubling provision applied to \$452.50 = \$905.00

LESS: Security deposit of \$452.50 already returned to tenant = \$452.50

Therefore, the tenant is entitled to a monetary award of \$452.50 as compensation for the landlord's failure to address the security deposit in accordance with section 38 of the *Act*.

Having been successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Having made the above findings, I order that the landlord pay the tenant the sum of **\$552.50** in full satisfaction of the security deposit and recovery of the filing fee paid by the tenant for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$552.50 pursuant to sections 38, 67 and 72 of the *Act*.

The tenant is provided with this Order 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: September 17, 2018

Residential Tenancy Branch