



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RADIO CITY INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD FFT

Introduction

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

- return of the security deposit pursuant to section 38 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 tenant's agent K.W. attended on behalf of the tenant. The landlord's agent M.H. attended on behalf of the corporate landlord.

As both parties were present, service of documents was confirmed. The tenant's agent testified that the landlord was served with the application for dispute resolution and evidence by registered mail on February 6, 2018 and provided a Canada Post registered mail tracking delivery certificate as proof of service. The landlord's agents confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord's evidence was served to the tenant's legal counsel both by regular mail and in person. The tenant's agent confirmed he had received the landlord's evidence in email format from the tenant's legal counsel. Therefore, I find that all the hearing documents for this matter were served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of the security deposit? And if so, is the tenant entitled to any statutory compensation as a result of the landlord's failure to comply with the security deposit requirements of the *Act*?

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

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.

A written tenancy agreement was submitted into documentary evidence. Both parties agreed to the following information about the tenancy agreement:

- The tenancy began on April 1, 2017 as a one-year fixed term tenancy agreement scheduled to end on March 31, 2018. After that date, the tenancy converted to a month-to-month tenancy until the tenancy ended on October 31, 2017 when the tenant returned vacant possession of the rental unit to the landlord.
- At the beginning of the tenancy, the tenant paid the landlord a security deposit of \$650.00.
- A condition inspection walk-through of the rental unit was completed by the landlord's agent and tenant at the beginning of the tenancy, but the landlord did not provide a written report of this inspection to the tenant.
- On October 31, 2017, upon move-out, a condition inspection walk-through of the rental unit was completed by the landlord's agent and the tenant, however, a written copy of the inspection report was never provided to the tenant.
- The tenant provided her forwarding address to the landlord in writing in a letter dated September 19, 2017.

Both parties confirmed that the tenant never provided the landlord with written authorization to deduct any amount from the security deposit.

The landlord's agent confirmed that the landlord did not file an application for dispute resolution to retain any portion of the security deposit. As well, the landlord's agent confirmed that the landlord was not entitled to withhold any portion of the tenant's security deposit in accordance with any previous arbitration order.

Both parties confirmed that the landlord sent the tenant a cheque for \$390.00 (cheque number 2015) on November 13, 2017 for the return of the security deposit. As this was only a partial return of the security deposit, the tenant's agent explained that the tenant contacted the landlord's agent to inquire on the status of the return of the remaining \$260.00 of the security deposit.

The landlord's agent testified that they investigated the matter and determined that there had been a processing error in returning the tenant's security deposit. On December 12, 2017, the landlord's agent sent the tenant a cheque in the amount of \$515.00 (cheque number 2054) to cover the remaining \$260.00 of the security deposit owed to the tenant, and also to refund an overpayment made by the tenant in the amount of \$255.00. Additionally, on December 12, 2017, the landlord's agent sent the tenant another cheque in the amount of \$260.00 (cheque

number 2059) to cover the “doubling” compensation provision required in the *Act* when a security deposit is not returned within 15 days of the end of the tenancy.

The tenant’s agent acknowledged that the tenant was in receipt of cheque number 2059 in the amount of \$260.00, but did not think it had been cashed by the tenant as it did not have any bank markings to indicate it had been cashed.

During the hearing, neither the tenant’s agent or the landlord’s agent could confirm with certainty if the cheque number 2059 had been cashed by the tenant. I allowed the parties until 3:00 p.m. the day after the hearing to consult with their respective banks and provide confirmation.

Within the time limit provided above, the landlord’s agent uploaded confirmation that cheque number 2059, in the amount of \$260.00, had not yet been cashed by the tenant.

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.

...

(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.

...

(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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, both parties confirmed that the tenant provided her forwarding address, in writing, to the landlord on September 19, 2017. However, as the tenancy ended on October 31, 2017, this is the later date and triggers the 15-day time limit provided by section 38 of the *Act*.

It was confirmed by both parties that the landlord did not return the full amount of the security deposit to the tenant with 15 days of the end of the tenancy, only a partial amount.

It was confirmed by the landlord's agent that the landlord had not applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenant did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

I further note that the landlord extinguished the right to claim against the security deposit by failing to provide a written condition inspection report at the beginning of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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 any portion of the security deposit.

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 double the amount of the security deposit withheld by the landlord, less the amount of the security deposit already returned to the tenant, with any interest calculated on the original amount only. No interest is payable for this period.

In this case, the landlord returned the following amounts to the tenant in relation to the security deposit:

Cheque Number	Date	Amount	Status
2051	November 13, 2017	\$390.00	Cashed
2054	December 12, 2017	\$260.00	Cashed
2059	December 12, 2017	\$260.00	Not cashed
TOTAL		\$910.00	\$650.00

However, it was confirmed by the landlord's agent that Cheque Number 2059 was never cashed by the tenant. Given that the cheque was issued over six months ago, it would likely be "stale-dated" and non-negotiable. Therefore, I have deducted the amount of this cheque (\$260.00) from the above total, and find that the landlord has returned to the tenant a total of **\$650.00** in relation to the security deposit.

For certainty, I direct the tenant to destroy cheque 2059 in her possession, and I recommend that the landlord place a stop payment on cheque 2059 to ensure that it is not cashed by the tenant.

Taking into account the above-noted, I find that the amount of compensation owed to the tenant is calculated as follows:

Original security deposit paid by tenant = \$650.00

Doubling provision applied pursuant to section 38(6) of the *Act* = \$1,300.00

Amount of security deposit returned by landlord = \$650.00

Amount of monetary award owed to tenant = \$1,300.00 - \$650.00 = \$650.00

Therefore, the tenant is entitled to a monetary award of \$650.00 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 **\$750.00** 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 \$750.00 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 19, 2018

Residential Tenancy Branch