



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENMAN PROPERTIES / CENTURY 21 IN TOWN REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 17, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the return of his security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The testimony of both parties was that the tenancy began on March 1, 2018, as a three-month fixed term tenancy. Rent in the amount of \$3,000.00 was to be paid by the first day of each month, and the Tenant paid the Landlord a \$1,500.00 security deposit (the deposit). It was also agreed that the Tenant ended his tenancy and moved out of the rental unit on May 31, 2018. Both parties agreed that the move out inspection was conducted that same day and that the Tenant provided his forward address on the

move-out inspection report. Both parties also agreed that the Landlord returned \$1,174.00 of the Tenant's \$1,500.00 security deposit to the Tenant.

The Tenant testified that at no time had he give the Landlord written or verbal permission to keep part of his deposit.

The Landlord testified she had retained \$326.00 of the Tenants deposit due to additional cleaning that we need at the end of the tenancy. The Landlord testified that she had emailed the Tenant the amount that would be deducted from the deposit but that the Tenant had not responded to the email or agreed to the requested deduction. The Landlord also testified that as of the date of this hearing, she had not filed an application to make a claim against the Tenants security deposit.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

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.

I find that this tenancy ended, in accordance with the *Act*, on May 31, 2018, the date the tenant moved out and that the Landlord received the Tenant's forwarding address. Accordingly, the Landlord had until June 15, 2018, to comply with section 38(1) of the

Act by either repaying the deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit. In this case, the Landlord returned \$1,174.00 of the Tenant's \$1,500.00 security deposit to the Tenant. I find that the Landlord did not have permission from the Tenant to retain \$324.00 of the deposit and she did not submit an Application for Dispute resolution to claim against the portion of the deposit she wished to keep.

At no time does a landlord have the right to simply keep any portion of the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, 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. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38(1) of the *Act* by not returning the Tenant's full security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven he is entitled to the return of double the security deposit. I find for the Tenant, in the amount of \$1,826.00, consisting of \$3,000.00 for the return of double the security deposit, less the \$1,174.00 that the Landlord has already returned.

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

Conclusion

I find that the Landlord has breached section 38 of the *Act*, as she failed to repay the full security deposit or make a claim against the portion of the security deposit she wanted to keep as required by the *Act*.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a Monetary Order in the amount of \$1,926.00. 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 25, 2018

Residential Tenancy Branch