



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACH HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on April 25, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The property owners and managers (the "landlords") confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on April 30, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2016 and ended on March 31, 2018. Monthly rent in the amount of \$925.00 was payable on the first day of each month. A security deposit of \$462.50 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The tenant's utility account was in her own name. After the tenant moved out, the landlords paid the tenant's final utility bill in the amount of \$27.35 without the tenant's consent. The landlords deducted \$27.35 from the tenant's security deposit. The landlords then sent the remainder of the security deposit, that being \$435.15, to the tenant via registered mail on April 13, 2018. The tenant received \$435.15 of her security deposit on April 16, 2018.

Both parties agreed to the following facts. A move in condition inspection and inspection report occurred on October 1, 2016 and was signed by both parties. A move out condition inspection and inspection report occurred on March 30, 2018 and was signed by both parties. The move out condition inspection report states "Damage to rental unit or residential property for which the tenant is responsible: 462.50 security deposit will be returned within 15 days after final utility bill is paid." In the section of the move out condition inspection report which allows the tenant to authorize deductions from her security deposit, the tenant did not authorize the landlord to retain any of her security deposit. The tenant provided her forwarding address on the move out condition inspection report.

The landlord testified that if the tenant failed to pay her final utility bill, the bill would be added to the landlords' property taxes. In support of this statement the landlord entered into evidence a billing policy from the city in question which stated the same. The landlord testified that they were concerned that the tenant was not going to pay her utility bill and that the tenant's utility bill would then be added to their property taxes.

Both parties agreed that the tenant's final utility bill was not overdue when the landlords paid it. The landlords testified that they paid the utility bill because the bill remained unpaid and the 15 days following the end of the tenancy was approaching which is

when they were required to return the security deposit. They did not want to return the security deposit before the utility bill was paid.

The landlords testified that they did not file an application with the Residential Tenancy Branch to retain any of the tenant's security deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings. The tenancy ended March 31, 2018. The tenant provided the landlords with her forwarding address in writing on the move out condition inspection report dated March 30, 2018. The landlord did not return the tenant's entire security deposit or make an application for dispute resolution to claim against it within 15 days after the end of the tenancy.

I find that the tenant did not provide the landlords with authorization to deduct a specific amount from her security deposit. I find that that the portion of the move out condition inspection report which states: "Damage to rental unit or residential property for which the tenant is responsible: 462.50 security deposit will be returned within 15 days after final utility bill is paid" does not constitute authority to deduct \$27.35 from the tenant's security deposit. I accept the tenant's testimony that she intentionally left the section of the move out condition inspection report allowing for deductions from her security deposit blank, because she did not consent to any deductions.

I find that a city's policies regarding utility billing procedures does not impact the interpretation of the *Act*.

Over the period of this tenancy, no interest is payable on the landlords' retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double her security deposit, pursuant to the following calculation:

$$\begin{aligned} & \$462.50 \text{ (security deposit)} \times 2 \text{ (double)} - \$435.15 \text{ (amount returned to tenant)} = \\ & \mathbf{\$489.85} \end{aligned}$$

Conclusion

I issue a Monetary Order to the tenant in the amount of \$489.85.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: October 26, 2018

Residential Tenancy Branch