



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PAYAM AND SANAZ HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF MNDC

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and by text with their forwarding address on December 5, 2018. The landlord agreed she had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) For compensation for a washing machine left in the unit; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act? Has she proved they are entitled to compensation for a washing machine and to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$1200 on February 25, 2018 and agreed to rent the unit for \$2400 a month. The tenant said they vacated the unit on November 30, 2018 and picked up some items left outside on December 1, 2018. They provided his forwarding address in writing on December 5, 2018. The landlord agreed these facts were basically correct but said the tenants did not actually vacate on November 30, 2018 but were using a shed for a time after that. The tenant's deposit has never been returned and they gave no permission to retain any of it.

The landlord said she retained the deposit for the tenant had unpaid utilities and caused damage to the unit. They filed a significant amount of evidence related to damages but

they had not filed an Application to claim against the deposit. I advised her in the hearing that I would not hear evidence of damages as they had not filed an application to claim against the tenant. I informed her how to do this within the two year time limit specified in the Act.

The tenant also claims compensation for a washer that was left in the unit. Apparently the old washer was not rinsing properly and after complaining to the landlord, the tenant replaced it. A prospective tenant offered to buy it off her if she left it in the unit but he never moved in. She provided an estimate showing what a new washer costs (\$699) but said she had bought the one she left from a friend and it cost \$300. She had no receipt and provided no evidence of the age of the washer. The landlord said the lease specifically did not include laundry which means a washer was not included. Since a washer was there, the tenant could use it but the landlord assumed no responsibility for it. She said the old washer is still there; she never authorized the replacement and denies what the tenant said.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

.

Analysis:

On preponderance of the relevant evidence for this matter;

Section 38(1) of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on December 5, 2018 and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the evidence of the tenant credible that they paid \$1200 security deposit on February 25, 2018, served the landlord by text with their forwarding address in writing on December 5, 2018 and vacated on or about November 30, 2018. Their credibility is supported by the landlord's agreement with these facts except she said they continued to live in a shed for a time. I find they gave no permission for the landlord to retain the deposit and have not received the refund of it. I find the landlord agreed with these facts. The landlord stated she has not filed an Application to claim against the deposit. I find the tenant entitled to recover double their security deposit.

In respect to the tenant's claim for compensation for \$699 for a washing machine, the onus is on the tenant to prove entitlement. I find insufficient evidence to support their claim. They did not provide a receipt for what they actually said they paid (\$300) nor did they provide the age of the machine. Residential Policy Guideline #40 provides for a useful life of items in rented premises which is designed to account for reasonable wear and tear. Washers are assigned a useful life of 10 years and the washer they allegedly bought may be beyond its useful life and they may not be entitled to compensation for it. Also the landlord denies the tenant supplied another machine.

The landlord currently holds a security deposit of \$1200.00 and was obligated under Section 38 to return this amount if they determined not to seek its retention through Dispute Resolution. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$2400.00 and is further entitled to recovery of the \$100.00 filing fee for a total entitlement of \$2500.00.

Conclusion

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$2500.00**. If necessary, this Order may be filed in the Small Claims 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: April 11, 2019

Residential Tenancy Branch