



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARIBALDI WEST PROPERTIES LTD and ELEVATE PERFORMANCE
REALTY AND MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit, for the return of half a month's rent and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord return the security deposit in a timely manner? Is the tenant entitled to the return of double the deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

Both parties agreed to the following: The tenancy started on August 15, 2018 for a fixed term of six months ending February 28, 2019. Prior to moving in the tenant paid a security deposit of 387.50. On December 27, 2018 the tenant gave written notice to end the tenancy effective the end date of the fixed term. The tenant also provided the landlord with her forwarding address in the written notice to end tenancy.

However, the tenant moved out on January 16, 2019. A move out inspection was conducted on that day and no discrepancies were identified. Since the fixed term would end on February 28, 2019, the tenant paid rent for February 2019 even though she had moved out on January 16, 2019.

The parties agreed that a new tenant was found for a tenancy starting February 15, 2019. The landlord agreed to return the rent for the latter half of February to the tenant in the amount of \$387.50.

The landlord stated that he sent out a cheque to the tenant on March 02, 2019 for the amount of \$775.00 which included the return of the deposit of \$387.50 plus the refund of rent for the first half of February. The landlord stated that the cheque was returned to the him and he had it cancelled. The landlord did not provide a copy of the cancelled cheque or proof that he had mailed a cheque to the tenant on March 02, 2019.

In an email dated March 18, 2019, to the property management company, the tenant asked about her deposit as she had not yet received it. The email was forwarded to the landlord, by the property manager who confirmed that the tenant had hired a cleaner and that *"all was good in the unit"*.

A cheque dated March 29, 2019 in the amount of \$775.00 was mailed to the tenant on April 03, 2019 and received by the tenant on April 05, 2019. The landlord filed a copy of the cheque into evidence.

The tenant is claiming the return of double the deposit in addition to the return of rent for the first half of February. The tenant agreed that she had received the cheque for \$775.00 and had cashed it.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant gave the landlord her forwarding address as early as December 27, 2018 when she gave notice to end the tenancy. The landlord was also provided with the tenant's forwarding address in writing on January 16, 2019 - the day the tenant moved out.

The evidence indicates that landlord was satisfied with the condition of the unit and therefore there were no deductions to be made to the security deposit.

Since the tenant had already moved out the landlord was required to return the deposit within 15 days of receiving the forwarding address.

Even if I accept the landlord's argument that the tenancy ended on February 15, 2019, the tenant received a cheque dated March 29, 2019 which was post marked April 03, 2019. The landlord stated that he had sent a cheque on March 02, 2019 which was returned to him and cancelled. The landlord did not provide a copy of this cancelled cheque but did provide a copy of a cheque to the tenant dated March 29, 2019. By April 04, 2019, the tenant had not received the deposit and therefore made this application.

Based on the above, I find that the landlord failed to repay the deposit or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The security deposit paid was \$387.50. Accordingly, the landlord must return \$775.00 to the tenant. The landlord also agreed to return half month's rent for the month of February in the amount of \$337.50. Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$100.00. The tenant confirmed that has already received a cheque in the amount of \$775.00 and has cashed it.

Overall the tenant has established a claim as follows:

1.	Return of double the deposit	\$775.00
2.	Return of rent for February 1-15, 2019	\$387.50
3.	Filing fee	\$100.00
	Total	\$1,262.50
	Minus amount received by tenant	-\$775
	Balance	\$487.50

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Regarding the landlord's claims relating to liquidated damages, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file his own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$487.50**

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: June 27, 2019

Residential Tenancy Branch