



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTE REALTY 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* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord MU ("landlord") and "landlord SN," and the tenant 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 landlord confirmed that he was the residential property manager and that landlord SN was the building manager, and that both agents had permission to represent the landlord company named in this application. This hearing lasted approximately 15 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

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

Both parties agreed to the following facts. The tenant did not move into the rental unit but signed an application for tenancy. A security deposit of \$612.50 was paid by the tenant and the landlord continues to retain this deposit. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord received a written forwarding address from the tenant by way of an email, dated August 20, 2019. The tenant provided a copy of this email. The landlord did not file an application for dispute resolution to retain any amount from the tenant's security deposit. The landlord did not have any written permission to keep any part of the tenant's security deposit.

The tenant seeks a return of double the amount of her security deposit of \$612.50, totalling \$1,225.00, and the \$100.00 application filing fee. The landlord disputes the tenant's application. The landlord claimed that the tenant did not move in, she did not provide a valid reason for not moving in, she completed an application for tenancy, a deposit was given to hold the unit and others could not move in because of that, and the deposit was used towards liquidated damages and the tenant cancelling at the last minute.

Analysis

Section 20(e) of the *Act* states the following:

20 A landlord must not do any of the following:

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

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 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 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 tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony and written evidence of both parties. I find that a tenancy was created even though the tenant did not move in, since an application for tenancy was signed and the tenant paid a security deposit to secure the rental unit from the landlord. The landlord did not complete any move-in or move-out condition inspection reports for this tenancy. The tenant provided emails from both parties indicating that the landlord received a cancellation of the tenant's tenancy and confirmed same in writing on August 8, 2019. Therefore, I find that the tenant's tenancy ended on August 8, 2019. The tenant provided a written forwarding address by way of an email on August 20, 2019, which was received by the landlord. In accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenant's forwarding address. Although email is not permitted under section 88 of the *Act*, the landlord acknowledged receipt of the forwarding address.

I find that the tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of the later forwarding address being provided on August 20, 2019.

I find that the landlord is not entitled to automatically keep the tenant's security deposit as a condition of the application of tenancy, for liquidated damages, for a last-minute cancellation, for improper notice, or for a loss of rent.

On a balance of probabilities and for the reasons stated above, as per section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$612.50, totaling \$1,225.00. There is no interest payable on the deposit during the period of this tenancy.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,325.00 against the landlord. 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: January 13, 2020

Residential Tenancy Branch