



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARCON DEVELOPMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant December 17, 2021 (the "Application"). The Tenant applied for return of double the security deposit.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant provided affirmed testimony.

The Tenant provided their correct legal name which is reflected in the style of cause.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant's evidence.

The Tenant testified that the hearing package and their evidence were sent to the Landlord by registered mail December 24, 2021. The Tenant provided Tracking Number 950. The Tenant testified that they sent the package to the Landlord's address provided to them on a business card in 2017 or 2018 when the tenancy started and written on the tenancy agreement. I looked Tracking Number 950 up on the Canada Post website which shows the package was delivered January 04, 2022.

Based on the undisputed testimony of the Tenant and Canada Post tracking information, I am satisfied the hearing package and Tenant's evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I am satisfied the Landlord received the package January 04, 2022. I am also satisfied based on the

evidence that the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The Tenant provided the following testimony and evidence.

There was a written tenancy agreement between the parties. The tenancy started May 01, 2017, and was a month-to-month tenancy. Rent was \$1,175.00 due on the first day of each month. The Tenant paid a \$590.00 security deposit and no pet damage deposit.

The tenancy ended December 31, 2019.

The Tenant provided their forwarding address to an agent for the Landlord in person December 31, 2019.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The parties did move-in and move-out inspections.

The Tenant submitted a letter they sent to the Landlord.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenant and find the following based on it.

The tenancy ended December 31, 2019.

The Tenant's forwarding address was provided to an agent for the Landlord in writing December 31, 2019.

December 31, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from December 31, 2019, to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of December 31, 2019. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

The Tenant participated in move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. Section 38(3) of the *Act* does not apply.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*.

The Landlord must return \$1,180.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Conclusion

The Tenant is issued a Monetary Order for \$1,180.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: July 29, 2022

Residential Tenancy Branch