



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOY KAMINSKI ADVENT REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC O

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*,
- a return of the security deposit pursuant to section 38 of the *Act*
- Other unspecified relief.

Both the tenant and the landlord appeared at the hearing. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant’s application for dispute resolution by way of Canada Post Registered Mail on June 2, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenants’ application.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Is the tenant entitled to a monetary award?

Background and Evidence

Testimony provided to the hearing by the tenant explained that this tenancy was to begin on July 1, 2017 and end on June 30, 2018. Rent was to be \$1,650.00 per month and a security deposit of \$825.00 was collected at the outset of the tenancy. On June 27, 2017 the tenant informed the landlord that due to unforeseen circumstances, she would not be moving in to the rental unit.

It was explained to the hearing by the tenant that she sought a monetary award of \$2,475.00. This amount is in reflection for a return of her security deposit, along with a return of rent for July 2017 which was paid. The tenant said that she had an understanding that rent for this month would be paid provided the rental unit was not occupied by another person.

The tenant was charged a \$525.00 "liquidated damages" fee as per the terms of their tenancy agreement and which was related to the costs associated with remarketing and preparing the rental unit that was re-rented on August 1, 2017. On August 4, 2017 \$239.60 was returned to the tenant by the landlord in reflection of the remaining security deposit.

As part of her evidentiary package, the tenant provided receipts from the Canada Post Registered Mail package that she sent to the landlord on July 10, 2017. She said this package included a written copy of her forwarding address, along with monetary order of \$25.00 made out to the landlord to cover the cost associated with a bank fee. Despite being shown as 'delivered' on the Canada Post Website, the landlord said that she did not receive this package.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's 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 as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

While the landlord said that she never received the tenant's forwarding address, evidence was presented to the hearing that the address was sent in writing to the landlord by way of Canada Post Registered Mail on July 10, 2017 and was received at the landlord's address on July 11, 2017. Pursuant to sections 88 & 90 of the *Act*, the landlord is deemed to have been served with the tenant's forwarding address.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address, or following the conclusion of the tenancy. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if a "liquidated damages" clause exists in the tenancy agreement, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss. Furthermore, the landlord would have to apply to arbitration before the *Residential Tenancy Branch* in order to have a determination made regarding the tenant's breach of a material term of the tenancy agreement.

While the landlord acknowledged that she withheld \$525.00 + GST from security deposit because of the costs associated with remarketing the rental unit, no evidence was produced at the hearing that the landlord received 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 as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,410.40, representing a doubling of the tenant's security deposit that has not been returned, less the \$239.60 already returned.

In addition to a return of the security deposit, the tenant said has applied for a return of rent for July 2017. Based on the testimony that was presented on the hearing, it is apparent that the rental unit was not occupied for July 2017 and was only re-rented for August 1, 2017. The tenant said that she had agreed to surrender this rent if the landlord could not find an occupant for July 2017. The landlord explained that due to the late notice the suite could not be rented until August 2017. I find that while the landlord has not applied for a monetary award, that the landlord suffered a loss because the suite could not be re-rented until August 1, 2017 as a result of the tenant's actions in

breaking the tenancy agreement a few days prior to her projected occupancy. The tenant's application for a return of July 2017 rent is therefore dismissed.

Conclusion

I issue a Monetary Order of \$1,410.40 in favour of the tenant as follows:

Item	Amount
Return of Security Deposit under section 38 (2 x 825.00)	\$1,650.00
Less Amount of Security Deposit Returned	239.60
Total =	\$1,410.40

The tenant is provided with a Monetary Order in the above terms and 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: November 16, 2017

Residential Tenancy Branch