



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the Act?

### **Background and Evidence**

The tenancy began in March 2004. Both parties acknowledged that the deposit of \$875.00 was paid at that time. The tenancy ended on May 31, 2013 and the written forwarding address was given on May 31, 2013. The landlord refunded \$620.00 of the tenant's security deposit on June 20, 2013.

The tenant testified that, after the forwarding address was furnished to the landlord, the landlord failed to refund the deposit within 15 days. The tenant testified that the landlord also neglected to make an application to keep the deposit within 15 days of receiving the address. The tenant is therefore seeking compensation of double the security deposit under section 38(6)(b) of the Act.

The landlord argued that, at the end of this 9-year tenancy, the unit was not left clean and in good repair. According to the landlord, the tenants had left damages to the rental unit and were aware that these damages would be deducted from their security deposit.

The landlord testified that the move-in and move-out condition inspection reports, that are in evidence, confirm that this damage was caused during the tenancy by the tenant and the tenant is therefore responsible to reimburse the landlord. The landlord testified that they returned the remainder of the security deposit on June 20, 2013, after withholding a portion to pay for the damages.

The landlord testified that the tenant was given a "*Standard Letter to Tenants*" that provided detailed information about the tenant's responsibilities at the end of the tenancy. The landlord testified that they also repeatedly attempted to schedule the move out condition inspection and after the inspection tried to discuss the damages being claimed, but the tenant refused to cooperate. The landlord pointed out that the tenants even refused to sign the move-out condition inspection report. The landlord stated that by not cooperating, the tenant had extinguished their right to the refund of their security deposit.

The landlord explained that the forwarding address provided by the tenant was a business address and, according to information they received from the Residential Tenancy Branch, this address would therefore not be considered as a valid service address. The landlord testified that they were not able to get the tenant's current residential address.

The landlord does not agree with the tenant's claim for a refund of double the security deposit.

## **Analysis**

### **Landlord's Claims for Damages**

Security deposits are funds held in trust by the landlord for the tenant. I find that section 38 of the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy.

If the permission is not in written form and signed by the tenant dated at the end of the tenancy, then the landlord's right to merely keep the deposit does not exist.

In this instance, the landlord argued that they validly deducted a portion of the security deposit as compensation for genuine damages to the rental unit caused by the tenant. The landlord testified that these damages are well documented in the move out condition inspection report. A copy of the report is in evidence.

As mentioned earlier, the Act does not permit a landlord to merely keep a security deposit, regardless of damages claimed by the landlord.

However, at the end of a tenancy, a landlord is at liberty to make an application for dispute resolution seeking to keep the deposit or any portion of the deposit to satisfy a liability or obligation of the tenant. In order to make such a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the tenancy ended and the forwarding address was received.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit. I also find that the landlord did not make application for an order to keep the deposit within the time permitted to do so. I find that the landlord refunded a portion of the security deposit, but not within 15 days of the end of the tenancy.

Although the landlord attempted to provide evidence in support of their monetary claim, I find that I am not able to hear, nor consider, any evidence with regard to any monetary claims by the landlord relating to damages and loss, because this hearing was solely to deal with the *tenant's* application under section 38 of the Act. No cross application was made by the landlord.

#### Tenant's Right to Security Deposit Extinguished

Section 36(1) of the Act states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

The landlord argued that the tenant had extinguished their right to claim the return of the security deposit by not cooperating in the move-out condition inspection. The inspection report in evidence shows that the report was signed by the landlord on June 20, 2013, approximately 3 weeks after the move-out date. The landlord testified that the tenants refused to sign the move-out portion of the condition inspection report.

The landlord testified that after the end of the tenancy, they had attempted to discuss various deficiencies that were found in the rental unit, with the tenant but the tenant was not willing to deal with the landlord's claims. The landlord pointed out that they sent a "*Moving Out – Standard Letter to Tenants*" to the tenants on

April 30, 2013, that outlined the tenant's responsibilities with respect to the move-out process. A copy of this letter is in evidence.

I find that conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and the Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report, after which the landlord must give the tenant a copy of that report in accordance with the regulations.

However, in addition to the above, section 20(1) of the Act states that a condition inspection report completed under section 23 or 35 of the Act must contain certain specific information. This includes the following:

*“(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*

*(k) the following statement, to be completed by the tenant:*

*I, .....*

*Tenant's name*

*[ ] agree that this report fairly represents the condition of the rental unit.*

*[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:*

*.....*  
*.....*  
*.....*  
*..... “*

I find that the document placed into evidence as a “*Move Out Condition Inspection Report*”, created by the landlord, does not feature the above section and therefore does not comply with the format requirements under the Act and Regulation.

Given the above, I do not accept the landlord's position that the tenant's refusal to sign the document is a violation that would extinguish the tenant's right to claim a refund of their security deposit.

In fact, I find that the tenant did not agree with the notations made by the landlord on the report, but was deprived of the opportunity to make that point clear on the form, due to the noncompliant format of the inspection report form. I find that this fact would affect the evidentiary weight of this document.

In any case, I find, as a fact, that the tenant's right to claim their security deposit has not been extinguished.

#### Tenant's Forwarding Address

The landlord argued that the security deposit was not refunded in full because the tenant failed to provide them with a proper written forwarding address and that t had only provided a business address, instead of the address where the tenant was currently residing.

Section 88 of the Act specifies what would be considered as valid service under the Act requires that all documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant; (*My emphasis*)**
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service prescribed in the regulations.

Although, based on an inquiry to the Residential Tenancy Branch, the landlord apparently felt that the business forwarding address given by the tenant was not valid, I find that the forwarding address provided, and identified by the tenant, did constitute a forwarding address as described in section 44 (d) of the Act. I find that the address was compliant and no determination can be made otherwise, as the Act is clear.

I find that there was no valid basis to doubt that the address provided by the tenant, for the return of the deposit, would not be a valid forwarding address for this tenant.

Based on the evidence, I find that the landlord had an obligation to either return the security deposit or make an application to keep it within 15 days of the date the address was received as required under the Act.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenant double the amount of the security deposit and pet damage deposit.

Schedule 2(2) of the Residential Tenancy Regulations also states that the 15 day period starts on the later of: (a) the date the tenancy ends, or; (b) the date the landlord receives the tenant's forwarding address in writing.

Accordingly, because the landlord failed to comply with the Act in refunding the deposit within 15 days, I find that the tenant is therefore entitled under the Act to a refund of double the \$875.00 deposit, amounting to \$1,750.00.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to compensation of \$1,830.98 comprised of \$1,750.00 for double the security deposit, plus interest of \$30.98 and the \$50.00 paid to file this application. After deducting the \$620.00 already refunded, I find that the tenant is entitled to a refund of \$1,210.98.

I hereby issue a monetary order for \$1,210.98 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

**Conclusion**

The tenant is successful in the application and is granted a Monetary Order for a refund of double the security deposit minus the amount already paid.

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: September 23, 2013

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Residential Tenancy Branch

