



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**            MNR, MND, MNDC, MSD, FF (Landlord's Application)  
                                     MNDC, MNSD, FF (Tenant's Application)

### **Introduction and Preliminary Matter**

This hearing convened as a result of cross applications. In the Landlord's Application filed August 12, 2016 the Landlord sought monetary compensation for unpaid rent, damage to and cleaning of the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee. In the Tenant's Application for Dispute Resolution filed October 12, 2016 the Tenant sought return of double her security and key deposit and recovery of the filing fee.

The hearing was conducted by teleconference on February 9, 2017 and March 13, 2017. Both parties called into the hearing on February 9, 2017. On March 13, 2017, the date the hearing reconvened, only the Tenant and her witness called in.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

#### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. While the Landlord gave some evidence at the hearing on February 9, 2017, she did not provide submissions on all the claims made. As the Landlord did not attend the hearing on March 13, 2017, and the Tenant appeared and was ready to proceed, I dismiss the Landlord's claim without leave to reapply.

At the March 13, 2017 hearing, the Tenant was given a full opportunity to be heard on the merits of her claims, to present her affirmed testimony, to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double the deposits paid?
2. Should the Tenant recover the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began March 2013. She stated that she paid a security deposit in the amount of \$800.00 and a key deposit in the amount of \$200.00 for a total of \$1,000.00 in deposits paid.

The Tenant stated that the Landlord did not perform a move in condition inspection as required by the *Residential Tenancy Act* and the *Residential Tenancy Regulation*. She stated that even though the Landlord resided in the same building, the Landlord did not complete the move in inspection until December 1, 2013, as she claimed to be unable due to her foot surgery.

The Tenant stated that when her partner moved from the rental unit in September of 2014, the Landlord asked her to sign a new tenancy agreement providing that the tenancy began October 1, 2014. This document indicated that monthly rent was payable in the amount of \$1,600.00 and the Tenant paid a security deposit of \$800.00 on October 1, 2014.

The Tenant stated that when her partner moved out of the rental unit in October of 2014, the Landlord also asked the Tenant participate in a new condition inspection report. The Tenant submitted that this document clearly indicated the damage to the rental unit at the time the tenancy began. She stated that she was very surprised when she received the Landlord's Application for Dispute Resolution as most of the claims she made related to damage which existed at the start of the tenancy.

The Tenant testified that tenancy ended on July 31, 2016.

She confirmed that she indicated on her application that she was seeking the sum of \$1,800.00 as she sought return of double her security deposit (which she paid in the amount of \$800.00) in addition to \$200.00 for a key deposit.

The Tenant testified that when she moved from the rental unit the Landlord failed to return the deposits. She confirmed that she provided her forwarding address on the move out condition inspection report. The Tenant further stated that the Landlord failed to provide her a copy of the report until she received the Landlord's application materials.

The Tenant also testified that she sought return of the filing fee paid in the amount of \$100.00.

### Analysis

The Tenant sought return of her security deposit and key deposit. Section 4 of the *Residential Tenancy Act* defines a security deposit as follows:

**"security deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

I find that the key deposit of \$200.00 meets the above definition such that I find the Tenant paid \$1,000.00 as a security deposit.

Section 38 of the *Residential Tenancy Act* deals with return of security deposits provides as follows:

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (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, or
  - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the Tenant's security deposit.

I accept the Tenant's testimony that the Landlord failed to provide her with a copy of the move out condition inspection report as required by sections 36(2)(c) of the *Residential Tenancy Act* and section 18 of the *Regulations*; for greater clarity I reproduce those sections as follows:

**Consequences for tenant and landlord if report requirements not met**

**36** ...

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

**Condition inspection report**

**18** (1) The landlord must give the tenant a copy of the signed condition inspection report

...

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act [*service of documents*].

Accordingly, I find that the Landlord has extinguished her right to claim against the Tenant's security deposit as it relates to damage.

However, the Landlord's retains a right to claim for loss of rent.

Rules 2.1 and 2.6 of the *Residential Tenancy Branch Rules of Procedure* provides as follows.

**Rule 2 – Making a claim**

**2.1 Starting an Application for Dispute Resolution**

To make a claim, a person must complete and submit an Application for Dispute Resolution.

**2.6 Point at which an application is considered to have been made**

The Application for Dispute Resolution has been made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or through a Service BC office.

The Landlord applied for dispute resolution on August 12, 2016. Although the Landlord's claim was dismissed for failure to attend the second day of the hearing, I find that the Landlord *made* her application as required by section 38(1). Accordingly, I decline the Tenant's request that I double the security deposit pursuant to section 38(6).

Having dismissed the Landlord's claims, I find pursuant to sections 67 and 72 of the *Residential Tenancy Act*, that the Tenant is entitled to return of her \$800.00 security deposit, her \$200.00 key deposit and recovery of the \$100.00 filing fee for a total of **\$1,100.00**.

Conclusion

The Landlord failed to attend the March 13, 2017 hearing and her application filed August 12, 2016 is dismissed.

The Tenant's claim pursuant to section 38(6) for return of double her security deposit is dismissed as the Landlord made her application for dispute resolution within the 15 days required by section 38(1).

The Tenant is entitled to return of her deposits paid as well as recovery of the filing fee. The Tenant is granted a formal Monetary Order in the amount of **\$1,100.00** and must serve the Monetary Order on the Landlord as soon as possible. Should the Landlord fail to comply with this 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 *Residential Tenancy Act*.

Dated: March 13, 2017

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Residential Tenancy Branch