



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- a monetary order for return of double the security deposit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- recovery of the filing fee paid for this application from the landlord.

Landlord G.B. and Landlord V.B. (the "landlords") and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords and the tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenant indicated that their claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is the same as their claim for return of double their security deposit. Therefore, I dismiss this claim as it unnecessary since I will be addressing the tenant's security deposit in relation to their claim for double the deposit.

Although the landlords submitted late evidence, the tenant confirmed that they had no issues with service of the landlords' evidence.

Issues to be Decided

- Is the tenant entitled to a monetary order for return of double the pet damage deposit or security deposit?
- Is the tenant entitled to recovery of the filing fee paid for this application from the landlord?

Background and Evidence

The undisputed evidence established that a month to month tenancy started in mid-August 2007 ending on June 30, 2015. There was no written tenancy agreement setting out the details of the tenancy. The landlord and tenant did not agree as to the amount of rent that was due and the amount of the security deposit paid. The parties agree that the tenant provided her forwarding address to the landlord in writing on June 30, 2015.

The tenant testified that they paid rent in the amount of \$720.00 including utilities since the start of the tenancy. The tenant testified that they paid a security deposit in the amount of \$375.00. The tenant did not have any documentation to support their testimony.

The landlords' evidence varied as to the amount of rent that was due at the start of the tenancy. The landlords' written evidence indicated the original rent was \$500.00 due each month. Landlord G.B. testified that rent might have been as high as \$600.00. The landlord testified that rent would never have been higher than \$600.00.

The landlords' evidence also varied as to the amount of the security deposit. Landlord G.B. testified that he believed that the tenant paid \$275.00 as a security deposit, but not more than \$300.00. On the other hand, the landlords' written evidence indicated that the damage deposit paid was \$250.00. The landlords did not have any documentation to support their testimony. Landlord G.B. testified that he did not receive a security deposit greater than ½ of one month's rent.

The landlords did not return the security deposit and they did not file an Application for Dispute Resolution seeking an Order allowing them to retain the deposit.

The landlords submitted evidence of damage to the rental unit to explain why they did not return the damage deposit. As the landlords did not file an application to retain the security deposit, I declined to consider this evidence. I find that this evidence is not relevant to the issues raised in the tenant's application in the absence of an application by the landlords.

The tenant is seeking a monetary order in the amount of \$850.00 for:

- return of double the security deposit (\$375.00 x 2); and
- recovery of the \$100.00 filing fee paid for their Application from the landlords.

Analysis

Based on the documentary evidence and the testimony of the landlords and tenant provided during the hearing, and on the balance of probabilities, I find the following.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit. The landlord must also pay the tenant double the amount of the security deposit with interest payable on the original amount of the security deposit.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

I find that the tenant paid rent in the amount of \$720.00 at the start of the tenancy. In making this finding, I prefer the testimony of the tenant over the evidence of the landlords. I find the landlords' evidence is vague and unreliable due to the inconsistencies between Landlord G.B.'s testimony and the landlords' written documents they submitted as to the amount of rent that was due. The tenant, however, did not waiver in her evidence as to the amount of rent paid at the start of the tenancy.

I find that the tenant paid a security deposit in the amount of \$375.00. In making this finding, I prefer the testimony of the tenant over that of the landlord. I find that the landlords' evidence is vague and unreliable based upon the different security deposit amounts indicated by the landlords in their evidence. The tenant, however, did not waiver in her evidence as to the amount of the security deposit that was paid.

I note that if one month's rent is \$720.00, a security deposit in the amount of \$375.00 is greater than 1/2 of one month's rent permitted under the *Act*. Although Landlord G.B. testified that the security deposit was not greater than the equivalent of 1/2 of one month's rent, I accept the tenant's testimony as to the amount they paid. The fact that

the landlords' evidence is inconsistent as to the amounts paid by the tenant leads me to prefer the tenant's recollection of the amount which did not waiver.

Based upon the undisputed testimony of the parties, I find that the tenancy ended on June 30, 2015 and that the tenant provided her forwarding address in writing to the landlords on that same date.

I find that the landlords did not return the security deposit nor file an application for dispute resolution seeking to retain the deposit within 15 days of June 30, 2015. Therefore, I find that the landlord must pay the tenant double the amount of the security deposit, with interest payable on the original amount of the deposit, in accordance with section 38(6) of the *Act*.

For the period starting August 15, 2007 (mid-August) to the present, and in accordance with the Residential Tenancy Branch Regulations, I calculate interest at \$7.80 payable on the original security deposit of \$375.00.

As the tenant's monetary claim is for \$850.00, I amend the tenant's application to include the interest payable on the original amount of the security deposit which is provided for in section 38(6) of the *Act*. This amendment increases the tenant's monetary claim to \$857.80. However, I find that the landlords are not prejudiced by this amendment as the landlords knew or ought to have known that interest is payable on the security deposit as it is mandated under the *Act*.

As the tenant's application was successful, I find that the tenant is entitled to recover the \$100.00 filing fee.

Based upon the foregoing, I find that the tenant is entitled to a monetary order in the amount of \$857.80 as follows:

Double the Security Deposit (\$375.00 x2)	\$750.00
Interest on the Security Deposit (\$375.00)	\$ 7.80
Filing Fee	\$100.00
Total Monetary Award	\$857.80

Conclusion

The tenant is granted a monetary Order in the amount of \$857.80 for double the security deposit, with interest payable and the filing fee. This monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 4, 2017

Residential Tenancy Branch