



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*; and
- for a monetary order pursuant to section 67 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The landlord was assisted at the hearing by her interpreter, D.D. (the “landlord”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenant’s application for dispute resolution, and the tenant’s evidentiary package. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served with the documents and the tenant’s application.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant testified that this tenancy began on May 1, 2015 and ended on April 1, 2016. Rent was \$725.00 per month and a security deposit of \$390.00 continues to be held by the landlord. The tenant stated that the landlord explained to her that family members would be moving in to the suite in April 2016 and a 2 Month Notice to End Tenancy was

served on the tenant in November 2016. Following a hearing before an arbitrator at the *Residential Tenancy Branch*, the parties agreed to a settlement whereby the tenant could remain in the rental unit until April 1, 2016. The tenant stated that she paid rent for the entire time of this tenancy, while the landlord testified that rent was not paid for January 2016 as per the terms of their settlement agreement.

Following the conclusion of this tenancy, the landlord's parents briefly occupied the rental unit. The landlord testified that a very bad smell prevented his wife's parents from continuing to occupy the rental unit in April 2016. Shortly after taking possession of the rental unit, these occupants moved out. In May 2016 some relatives arrived from Calgary and again, briefly occupied the rental suite.

The tenant explained that no condition inspection reports were performed at the conclusion of the tenancy, that the landlord did not have permission to retain her security deposit and that the landlord has failed to return her security deposit. She said that she returned the keys along with a copy of her forwarding address to the landlord by placing it in the mailbox on April 1, 2016. Following this, the tenant said she called and texted the landlord to inform her of the location of the keys and her address.

The tenant is seeking a Monetary Order of \$2,230.00, this amount represents:

Item	<u>Amount</u>
Return of Security Deposit (2 x 390.00)	\$780.00
Penalty for 2 month notice (2 x 725.00)	1,450.00
Total =	\$2,230.00

During the course of the hearing, the landlord acknowledged that the security deposit was not returned to the tenant. The landlord explained that she never received the tenant's forwarding address or the keys to the suite on April 1, 2016. She said she was forced to change the locks of the rental unit. The landlord stated that around April 15, 2016 she received the tenant's forwarding address. Following this, she mailed a copy of the security deposit to the tenant. The amount sent to the tenant was \$157.20 as the landlord submitted that significant repairs and cleaning were needed in the suite following the tenant's departure. This cheque was never collected by the tenant, despite being sent by Canada Post Registered Mail.

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.

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 in April 2016, or following the conclusion of the tenancy on April 1, 2016. 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 damages exist, 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. The landlord may disagree with the tenant regarding the date on which she received the tenant's forwarding address; however, the fact remains that the landlord never applied to retain the tenant's security deposit.

While the landlord acknowledged that she kept the \$232.80 of security deposit because of damage to the suite, 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 \$780.00, representing a doubling of the tenant's security deposit that has not been returned.

The tenant has also applied for a monetary award of \$1,450.00. She is seeking this amount in satisfaction for vacating a rental unit after having been issued a 2 Month Notice to End Tenancy based on the landlord's use of property.

Section 51(1) of the *Act* states, “A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.” Testimony was provided to the hearing by the landlord that she fulfilled this requirement of the *Act* and provided the tenant with free rent for January.

The second portion of section 51 of the *Act* states, “In addition to the amount payable under subsection (1) [above], if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.”

I am satisfied based on the evidence before me and the testimony provided by the tenant that the landlord did not use the rental unit for the purpose stated in the 2 Month Notice to End Tenancy. During the hearing the landlord acknowledged that the suite was only briefly occupied by his wife's parents prior to their vacating the suite. While outside factors may have contributed to these people no longer wanting to occupy the rental unit, the fact remains that the tenant vacated the suite because of the issuance of a 2 Month Notice, and the landlord's therefore have an obligation to use the rental suite for the purposes stated on the 2 Month Notice. Pursuant to section 51 of the *Act*, I find that the tenant is entitled to a monetary order in reflection to the landlord's violation of the *Act*.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$2,230.00 against the landlord. 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.

Item	<u>Amount</u>
Return of Security Deposit (2 x 390.00)	\$780.00
Penalty for 2 month notice (2 x 725.00)	1,450.00
Total =	\$2,230.00

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: August 29, 2017

Residential Tenancy Branch