



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI FF MNDC MNSD

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear the tenant's application for:

- a return of the security deposit pursuant to section 38 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- disputing an additional rent increase pursuant to section 56 of the *Act*.

Only the tenant A.M. appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant explained that he sent the landlord a copy of his application for dispute resolution and evidentiary package by way of Canada Post XpressPost. A copy of the Canada Post tracking number and letter were provided to the hearing as part of the tenant's evidentiary package. The tenant informed that this application and evidentiary package were sent to the landlord's last known address but they were returned to him by Canada Post.

Pursuant to sections 88, 89 & 90 of the *Act*, I find that the landlord was deemed to have been served with the tenant's application for dispute resolution and evidentiary package 5 days after their posting.

Following opening remarks, the tenant said that he had vacated the rental unit and would no longer be pursuing the portion of his application disputing a rental increase.

### Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit?

Can the tenant recover a monetary award or damage or loss under the tenancy agreement?

Is the tenant entitled to a return of the filing fee?

### Background and Evidence

Undisputed testimony was provided by the tenant that this tenancy began on April 1, 2017 and ended on July 2, 2017. Rent was \$1,650.00 per month and a security deposit of \$825.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant said that this was a month to month tenancy which was set to begin April 1, 2017; however, the landlord did not actually have the rental unit prepared for the tenant's arrival until April 15, 2017. Despite this later exclusive possession of the unit, the tenant paid rent for the entire month of April 2017. The tenant said he is seeking a monetary award in reflection of a return of his security deposit which continues to be held by the landlord and for the loss he suffered as a result of paying rent for an apartment which was not prepared for his arrival. Additionally, the tenant said he was seeking compensation because the landlord threatened to physically remove him from the property if he did not agree to a rental increase above what is allowable under the *Act*.

The tenant said that no condition inspection report was ever completed between the parties at the start or following the conclusion of the tenancy, while no evidence was provided by the tenant on a date where he provided his forwarding address to the landlord in writing.

### Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a 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 a 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). Under section

38(3)(b) a landlord may also retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

I find that both parties have breached section 38 of the *Act*. The landlord has not returned the tenant's security deposit within 15 days after the end of the tenancy; however, no evidence was produced at the hearing that the tenant provided the landlord his forwarding address *in writing*. Section 17-1 of the *Residential Tenancy Policy Guideline* notes, "In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss." In this case, I find that the landlord failed to apply to retain the tenant's security deposit and did not perform a condition inspection of the rental unit at the start or conclusion of the tenancy. The landlord was therefore the first party to breach the *Act*.

Section 24(2)(c) of the *Act* reads as follows; The right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Under 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 \$1,650.00, representing a doubling of the security deposit that has not been returned.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a monetary award.

I find that the tenant has supplied adequate evidence to establish that he suffered a loss of related to the tenancy. The tenant provided undisputed testimony that he signed a tenancy agreement which was to take effect on April 1, 2017 but that the landlord was not moved out of the rental unit until April 15, 2017. I find that the tenant has established damage and loss stemmed directly from a violation of the tenancy agreement signed

between the parties. I find that the tenant is entitled to a monetary award equivalent to half of a month's rent, the time for which he was displaced from the rental unit.

As the tenant was successful in his application, he may recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a Monetary Order of \$2,575.00 in favour of the tenant as follows:

Item	Amount
Return of Security Deposit as per section 38 of the <i>Act</i> (2 x \$825.00)	\$1,650.00
Monetary Award under section 67 of the <i>Act</i>	825.00
Return of the Filing Fee	100.00
<b>Total =</b>	<b>\$2,575.00</b>

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: January 16, 2018

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Residential Tenancy Branch