



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and the tenant confirmed receipt of the landlord's evidentiary materials sent in response. The landlord requested to call witnesses to describe the condition of the rental unit only. The landlord stated that the witnesses would say that the unit was left in poor condition but that none of the witnesses had evidence about the tenant, a move-out inspection or the agreement to any monetary amounts. For this reason, the witnesses were not called.

Issue(s) to be Decided

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

Is the tenant entitled to an amount equivalent to the security deposit for the landlord's contravention of the Act?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on March 10, 2017 with a monthly rental amount of \$850.00. The tenant vacated the rental unit on July 31, 2017. The landlord continues to hold the security deposit in the amount of \$850.00 paid by the tenant at the outset of this tenancy. The tenant testified that the landlord required the deposit amount be provided in cash. The tenant sought the return of the deposit.

The tenant testified that he gave notice in writing and in person to the landlord on June 30, 2017 – 1 month prior to his move-out. He testified that the landlord refused to conduct a condition inspection at move-in or move-out. He testified that, after vacating the rental unit, he has continued to request the return of his security deposit from the landlord but no amount has been returned.

The landlord testified that he didn't know he had to apply to keep the tenant's security deposit. He also testified that he did not know there was a limit to the amount of security deposit he could take from the tenant. He testified that the tenant didn't give him a telephone number at move-out so he couldn't call to talk to him. He acknowledged that he had a forwarding address for the tenant. The landlord testified that, when the tenant vacated the rental unit, he was very rude to the landlord- the landlord testified that the tenant gave him his keys to the unit and told the landlord he didn't want his security deposit back.

The tenant testified that he spent an entire day cleaning the unit on his move-out. He testified that the landlord did not mention any concerns or damage. He testified that he did not waive the right to his deposit or to any exceptional deductions with the landlord. He testified that he certainly did not agree that the landlord could just keep his entire security deposit. He sought its return pursuant to section 38 of the Act.

Analysis

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 security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*).

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. In this case, the landlord was informed of the forwarding address prior to the tenancy. The landlord did not dispute this evidence provided by the tenant. The parties agreed that the tenant vacated the rental unit on July 31, 2017. The landlord had 15 days after July 13, 2017 to take one of the actions outlined above. As of the date of this hearing, the landlord has not made an application to retain the tenant's security deposit.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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." The tenant testified that he did not agree to allow the landlord to retain any portion of the security deposit. As there is no evidence that the tenant has given the landlord written authorization at the end of this tenancy to retain any portion of his deposit, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit. The parties did not agree to an amount to be retained by the landlord.

The tenant sought the return of his \$850.00 deposit. It is worth noting for the benefit of both parties that a security deposit must be a maximum of half of one month's rent. I refer the parties to section 17 and 19 of the *Act*,

Landlord may require security deposit

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[emphasis added]

The landlord confirmed that he did not apply to the Residential Tenancy Branch to retain the tenant's deposit. The landlord testified that the tenant left damage to the rental unit that he believed he was entitled to retain. The landlord sought to provide evidence of

the damage to the unit however the landlord had not undertaken a condition inspection report at the start or the end of this tenancy. I refer the landlord to section 35 and 36 of the Act with respect to condition inspections,

Condition inspection: end of tenancy

35 (1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3)The landlord must complete a condition inspection report in accordance with the regulations.

(4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5)The landlord may make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1)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.

(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

(a)does not comply with section 35 (2) [*2 opportunities for inspection*],

**(b)having complied with section 35 (2), does not participate on either occasion, or
(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.**

I note that the landlord has not taken any of the steps required of him with respect to a condition inspection and has made no application to retain the tenant's security deposit. Therefore, the landlord is not entitled to claim any portion of the tenant's security deposit. I find that the tenant is entitled to a monetary order including \$850.00 for the return of the full amount of his security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the evidence of both parties before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant testified that he has not waived his right to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a total monetary order amounting to double the value of his security deposit plus any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the tenant as follows:

Item	Amount
Return of Security Deposit (equivalent to a full months' rent)	\$850.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	850.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order for Tenant	\$1800.00

The tenant is provided with this 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: March 15, 2018

Residential Tenancy Branch