# Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNSD

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ('the Act"). The matter was set for a conference call hearing.

The Tenant applied for the return of the security deposit and / or pet damage deposit.

The Landlord applied requesting a monetary order for damage to the unit, and to keep all or part of a pet damage deposit or security deposit.

Both parties were present at the hearing. The Landlord was represented by her agents. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord's agents submitted that the documents they received from the Tenant should have been addressed to the name of the Landlord. They submitted that while they are now acting as agents for the Landlord, they were not agents for the Landlord during the tenancy.

In reply, the Tenant testified that the agents collected the rent and dealt with repair issues on behalf of the Landlord during the tenancy. He submitted that the Landlord has dementia and agents act on the Landlord's behalf.

The Landlords agents confirmed that they have acted on behalf of their mother who has dementia.

The Act defines a Landlord as follows:

> ***"landlord"****, in relation to a rental unit, includes any of the following:*
> *(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
> *(i) permits occupation of the rental unit under a tenancy agreement, or*
> *(ii)* ***exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;***
> *(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
> *(c) health and safety.*
> *(i) is entitled to possession of the rental unit, and*
> *(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
> *(d) a former landlord, when the context requires this;*
>
> ***[my emphasis]***

I find that the Landlord's agent, Mr. S.B. exercised powers and performed duties under the Act, and tenancy agreement, by collecting rent, and by dealing with repair issues. I find that the Landlord's agent is the Landlord and has properly received the Tenants evidence.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord retain the security deposit in partial satisfaction of his claim?
- Is the Tenant entitled to double the security deposit?

Background and Evidence

The parties testified that the tenancy commenced in 2002, on a month to month basis. Rent in the amount of $600.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of $300.00 to the Landlord.

The Parties testified that the Tenant moved out of the rental unit on June 2, 2017. The parties testified that the Landlord issued the Tenant a 2 Month Notice To End Tenancy

For Landlord's Use Of Property. The Tenant accepted the 2 Month Notice and moved out of the rental unit.

Tenant's Application

The Tenant is seeking the return of the security deposit of $300.00.

The Tenant testified that the Landlord has failed to return the security deposit within 15 days after the end of the tenancy as required under the Act.

The Tenant testified that there was no agreement reached that the Landlord was entitled to keep any amount of the security deposit.

The Tenant testified that he provided his forwarding address in writing to the Landlord on several different occasions. The Tenant testified that he provided his forwarding address in writing on June 14, 2017. He submitted that he again provided his forwarding address in writing on June 25, 2017. He submitted that he sent the Landlord registered mail containing his forwarding address on August 15, 2017. The Tenant provided copies of the letters that were sent to the Landlord.

In reply the Landlord, Mr. S.B. stated that they are holding the security deposit and did not return it to the Tenant because of damage to the rental unit.

The Landlord, Ms. B.G. testified that at the end of the tenancy they told the Tenant to call them to arrange for a move out inspection.

Landlord's Application

Damage

The Landlord testified that the Tenant is responsible for damage to the rental unit. The Landlord is seeking to keep the security deposit of $300.00 due to the damage.

The Landlord did not repair the damage in the unit, and did not provide any receipts for any repair costs. The Landlord provided photographs of the rental unit that they submit were taken one week after the Tenant moved out.

The Landlord ended the tenancy for the Landlord's use of property and they testified that since the Landlord was moving into the unit they completely renovated the unit by replacing the kitchen, bathroom, and livingroom.

In reply, the Tenant testified that the carpet, linoleum and windows in the unit were in very poor condition as they were over 30 years old.

The Tenant testified that he informed the Landlord that the windows in the unit were old and leaky and attracting moisture and mould. The Tenant submitted that the carpets were ruined as they had bleach type stains caused by a previous Tenant.

The Tenant testified that the Landlord knew about the poor condition of the bathroom because the Landlord recently attended the unit to fix it.

The Tenant submitted that when the Landlord painted a door, he closed it before the paint dried which effectively glued it shut.

With respect to a move out inspection, the Tenant testified that while it is not his responsibility to arrange for a move out inspection, he did contact the Landlord to suggest dates for the inspection and the Landlord ignored him.

Analysis

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

> *The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*
> *If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

> *• the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
> *• having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Landlord's Claims

I find that the Landlord failed to arrange for a move out inspection with the Tenant at the end of the tenancy. The Landlord's right to file a claim against the security deposit is extinguished.

I dismiss the Landlord's claim for compensation in the amount of $300.00. The Landlord did not establish that they suffered a loss and did not establish the value of the loss. The Landlord completely renovated the rental unit for their own use rather that repair any damage. I find that the Landlord has failed to establish that they suffered a loss. In addition, because there were no inspections conducted, there is insufficient evidence from the Landlord to prove the condition of the rental unit at the start of the tenancy and the end of the tenancy. The Landlord provided insufficient evidence to establish that the Tenant damaged the rental unit.

The Landlords claims are dismissed in their entirety without leave to reapply.

Tenant's Claims

I find that the Tenant moved out of the rental unit on June 2, 2017. I accept the Tenant's testimony and evidence that the Landlord was provided with the Tenant's forwarding address in writing by registered mail sent on August 15, 2017, and failed to return the deposit to the Tenant or file a claim to keep it within 15 days of receiving the Tenant's address.

I find that the Landlord breached section 38 of the Act and must pay the Tenant double the amount of the deposit. The Landlord owes the Tenant the amount of $600.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the $100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order against the Landlord in the amount of $700.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord extinguished their right to apply against the security deposit when they failed to arrange a move out inspection of the rental unit at the end of the tenancy.

The Landlord's claim for $300.00 is dismissed due to insufficient evidence that the Tenant breached the Act and the Landlord suffered a loss.

The Landlord failed to return or claim against the security deposit within 15 days of receiving the Tenant's forwarding address in writing. The Tenant is granted a monetary order against the Landlord in the amount of $700.00 for double the security deposit and the cost of the filing fee for the hearing.

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: May 17, 2018

Residential Tenancy Branch