



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDL-S

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorization to obtain a return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 10:16 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. Tenant E.F. attended the hearing, along with S.F. who was assisting her, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that Tenant E.F., S.F. and I were the only ones who had called into this teleconference.

The tenant provided sworn testimony that she served a copy of the Notice of Dispute Resolution Proceeding package and evidence to the landlord by Canada Post registered mail on May 3, 2018. The tenant verbally provided a Canada Post tracking number as proof of service, which I have noted on the cover sheet of this decision. The tenant also applied for an Amendment to an Application of Dispute Resolution on May 18, 2018. The tenant testified that she served the landlord with a copy of her Amendment application and associated evidence by Canada Post registered mail on May 18, 2018 and verbally provided the tracking number as proof of service. I have noted this tracking number on the cover sheet of this decision. Therefore, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

### Preliminary Issue – Naming of Parties to this Application

Although two other parties are named as applicants in this matter, the tenant confirmed that she was the only person named on the tenancy agreement and was the only person who signed the tenancy agreement. I find that the other named parties were occupants/roommates with no rights or responsibilities under the *Act*.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to remove the names of the other two parties.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? And if so, is the tenant entitled to any statutory compensation equivalent to the amount of the security deposit for the landlord's failure to comply with the *Act*?

Is the tenant entitled to a monetary award for compensation for damage/loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The tenant provided the following undisputed testimony regarding the tenancy agreement. The tenancy began September 1, 2015 as a fixed term tenancy but then converted to a month to month tenancy, ending on March 1, 2018. Monthly rent was \$1,250.00 payable on the first of the month. The tenant paid a security deposit of \$625.00 at the beginning of the tenancy, which continued to be held by the landlord.

When the tenant took possession of the rental unit, she alleges that a move-in condition inspection report was never prepared by the landlord for her to sign, nor was she given a copy of any report. The tenant confirmed that a move-out condition inspection was conducted with the landlord on March 1, 2018.

The tenant submitted into documentary evidence a copy of the move-out condition inspection report. There is no information in the report pertaining to a move-in inspection. The report only contains a date for the move-out inspection, and only contains information in the column titled "Condition at End of Tenancy".

The report contains details pertaining to damages related to "rooms that need to be painted back to white" and specifies five rooms, as well as an "indigo dye stain on kitchen floor". The tenant confirmed that she signed the report and agreed in writing, in the report, to deductions from the security deposit for the above-noted damages, more specifically, for painting costs of \$200.00 per room for five rooms, and \$75.00 for the floor stain. In total, the deductions to the security deposit agreed to by the tenant totalled \$1,075.00 which exceed the amount of the security deposit held by the landlord.

The tenant testified that she provided the landlord with her forwarding address via email communication on March 6, 2018 and that the landlord responded to that email on March 10, 2018 regarding the fact that the landlord had not yet calculated all the damages. The tenant submitted into documentary evidence a copy of her email exchange with the landlord.

The tenant confirmed that she was provided with a copy of the move-out condition inspection report by the landlord on March 10, 2018.

In addition to her claim for the return of her security deposit, the tenant is also seeking compensation as a result of the tenancy being ended by the landlord. The tenant alleges that on January 31, 2018, she received a notice delivered in person by the landlord requiring her to vacate the rental unit by March 31, 2018. The tenant alleges that the form used by the landlord was not an official form. The tenant stated that the landlord had informed her that the grounds for ending the tenancy were for landlord's use as the landlord intended to move into the rental unit.

The tenant stated that she found another rental unit and gave notice to the landlord that she was able to move out earlier, and therefore she moved out on March 1, 2018. The tenant claims that she is entitled to the return of one month's rent paid for February 2018 as she believes that this should have been provided to her free as compensation for having to move out of the rental unit for landlord's use.

The tenant did not submit into documentary evidence a copy of the notice received from the landlord as she stated it had been lost during the move. The tenant did submit a copy of an email exchange between her and the landlord regarding a two month notice. In the email dated January 17, 2018, the landlord states:

*"...I haven't given the official 2 month notice yet. I will provide it closer to the end of the month..."*

The tenant is further claiming that she is entitled to a compensation equivalent to the amount of two months' rent as she alleges that the landlord did not move into the rental unit but instead placed the property for sale.

The tenant stated that when she attended at the rental unit on March 6, 2018 she noticed that the property was for sale. She submitted into documentary evidence a real estate listing of the property. The tenant stated that, to her knowledge, the property was still listed for sale as of the day prior to this hearing.

### Analysis

The tenant argues that she was entitled to one month's rent as compensation due to the fact that the landlord ended the tenancy for landlord's use. She has also applied for an additional two months' rent as compensation because the landlord did not use the rental unit for the stated purpose.

Section 51(1) of the *Act* provides the following:

- 51 (1) 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.

Section 51(2) of the *Act*, prior to recent legislative changes, provided the following additional compensation in the event the rental unit was not used for the stated purpose on the notice:

*"...the landlord, or the purchaser, 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."*

The triggering event for the compensation provisions in section 51 of the *Act* is the tenant's receipt of a Notice to End Tenancy for Landlord's Use. In this case, the tenant did not submit any documentary evidence of the notice as it was lost when she moved. Further to this, the email from the landlord states that the notice had not yet been issued. No conclusive evidence was presented that the notice was ever issued, that the tenant received the notice, or the stated grounds for ending the tenancy on the notice.

As the tenant cannot provide any evidence that she received a Notice to End Tenancy for Landlord's Use under section 49 of the *Act*, and the email exchange with the landlord regarding the notice does not confirm a notice was given, I find that there is insufficient evidence before me to conclude that the tenant received a Notice to End Tenancy for Landlord's Use under section 49 of the *Act*.

Therefore, I find that the tenant is not entitled to compensation in the amount of one month's rent pursuant to section 51(1) of the *Act*. Further to this, I find that the tenant is not entitled to compensation in the amount of two months' rent pursuant to section 51(2) of the *Act*.

As a result of this finding, I dismiss the tenant's application for compensation provided under section 51 of the *Act*, without leave to reapply.

In order to determine if the tenant is entitled to the return of the security deposit or a portion of it, I must consider whether or not either party extinguished their rights to the security deposit.

Section 23 of the *Act* sets out the requirements for a landlord and tenant to undertake a condition inspection report of the rental unit upon the tenant taking possession of the unit, as follows:

- 23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
  - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) 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.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
  - (a) the landlord has complied with subsection (3), and
  - (b) the tenant does not participate on either occasion.

Section 24 of the *Act* sets out the consequences for not fulfilling the condition inspection report requirements, as follows:

- 24(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 has complied with section 23 (3) [2 opportunities for inspection], and
  - (b) the tenant has not participated on either occasion.
- (2) The right of a 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 23 (3) [2 opportunities for inspection],
  - (b) having complied with section 23 (3), does not participate on either occasion, or
  - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, a move-in condition inspection report was not completed in accordance with the Residential Tenancy Regulations. Therefore, I find that the landlord did not meet the requirements of section 23 of the *Act* for completing a condition inspection report upon the tenant taking possession of the rental unit. As such, pursuant to section 24(2) of the *Act*, I find that the landlord's right to claim against the security deposit for damages was extinguished.

The tenant acknowledged that she had provided consent for the landlord to withhold a portion of the security deposit as a result of damages claimed by the landlord.

Residential Tenancy Policy Guideline 17. Security Deposit and Set Off, section B. Security Deposit, paragraph 7, provides guidance on circumstances where a tenant consents to the landlord retaining the security deposit:

7. 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 (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); 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.

As I have already found that the landlord extinguished their rights to claim against the security deposit pursuant to section 24(2) of the *Act*, I also find that the landlord extinguished their rights to obtain the tenant's consent to retain the security deposit or a portion of it, pursuant to section 38(5) of the *Act*.

Regardless of whether or not the landlord believed that they did or did not have rights to retain the security deposit, the landlord was obligated to abide by section 38 of the *Act*.

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 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 deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay

the tenant a monetary award equivalent to the original value of the security deposit pursuant to 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 writing. In this case, the tenant emailed her forwarding address to the landlord on March 6, 2018 and the landlord replied to that email on March 10, 2018.

I note that email is not one of the acceptable methods for providing written notice as set out in section 88 of the *Act* provided below:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

However, section 71(2)(c) of the *Act* allows me to determine if a document not served in accordance with section 88 of the *Act* is "sufficiently given or served for purposes of this *Act*." Since the landlord replied to the tenant's email message on March 10, 2018, I find that landlord was sufficiently served with the tenant's forwarding address pursuant to section 71(2)(c) of the *Act* on March 10, 2018.

There is no evidence before me to indicate that the landlord returned the security deposit to the tenant or filed an Application for Dispute Resolution with the Residential Tenancy Branch within 15 days of receiving the tenant's forwarding address in writing.

In weighing the testimony and the evidence 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. Further, I find that the landlord had extinguished their rights to retain the security deposit and therefore had also

extinguished their rights to obtain the tenant's written authorization to withhold any portion of the security deposit.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary award equivalent to the value of double the security deposit of \$625.00 withheld by the landlord, with any interest calculated on the original amount only. No interest is payable for this period.

As explained earlier in this decision, I dismiss the tenant's claim for compensation pursuant to section 51 of the *Act*.

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

#### Conclusion

I issue a Monetary Order in the amount of \$1,350.00 in favour of the tenant. The breakdown is as follows:

Item	Amount
Return of security deposit withheld by landlord	\$625.00
Monetary award for landlord's failure to comply with s. 38 of the <i>Act</i> (equivalent to value of security deposit paid)	\$625.00
Recovery of filing fee for this Application	\$100.00
<b>Total Monetary Order in Favour of Tenant</b>	<b><u>\$1,350.00</u></b>

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: June 18, 2018

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Residential Tenancy Branch