



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KUMAKEN APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD FFT

### Introduction

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

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agents R.P. and P.J. attended on behalf of the corporate landlord.

As both parties were present, service of documents was confirmed. The tenant testified that the landlord was served with her application for dispute resolution and evidence by registered mail on February 14, 2018 and provided a Canada Post registered mail tracking number as proof of service. The landlord's agents confirmed receipt of the tenant's application for dispute resolution and evidence. Therefore, I find that the tenant's application was served in accordance with section 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of the security deposit? And if so, is the tenant entitled to any statutory compensation as a result of the landlord's failure to comply with the security deposit requirements of the *Act*?

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

## Background and Evidence

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

A written tenancy agreement was not submitted into documentary evidence, however, both parties agreed to the following information about the tenancy agreement:

- The tenancy began on December 1, 2015 as a two-year fixed term tenancy agreement, which ended on December 31, 2017 when the tenant returned vacant possession of the rental unit to the landlord.
- At the beginning of the tenancy, the tenant paid the landlord a security deposit of \$675.00.
- A condition inspection walk-through of the rental unit was completed by the landlord and tenant at the beginning of the tenancy, but the landlord did not provide a written report of this inspection to the tenant.
- On December 31, 2017, upon move-out, a condition inspection walk-through of the rental unit was completed by the landlord and the tenant, however, a written copy of the inspection report was never provided to the tenant.
- The tenant provided her forwarding address to the landlord verbally and via text message on December 31, 2017.

The tenant acknowledged that during the walk-through condition inspection of the rental unit, the landlord's agent pointed out a small stain in the carpet. The tenant stated that she had paid to have the carpets cleaned at the end of the tenancy and considered the stain to be a result of normal wear and tear over the course of a two-year tenancy.

The tenant stated that the landlord's agent advised her that he would need to look into removing the carpet stain and estimated that the cost could be around \$50.00.

Both parties confirmed that the tenant never provided the landlord with written authorization to deduct any amount from the security deposit.

The tenant testified that at the end of January 2018 she had still not received her security deposit, and as such she contacted the landlord's agent on January 31, 2018 to inquire on the status of the security deposit.

The landlord's agent testified that the tenant's security deposit cheque was sent in the mail to the tenant on January 18, 2018, but was never received by the tenant.

Therefore, the landlord's agent sent out a replacement cheque to the tenant on February 2, 2018, which was received by the tenant.

Both parties confirmed that the cheque provided to the tenant was \$620.00 rather than the full amount of the security deposit paid by the tenant, which was \$675.00.

The landlord's agent testified that \$55.00 of the security deposit was retained by the landlord as a result of costs related to cleaning the carpet stain in the rental unit.

The landlord's agent confirmed that the landlord did not file an application for dispute resolution to retain any portion of the security deposit.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenant's application for the return of the security deposit, and that any testimony in relation to the alleged carpet damage was not relevant for making a determination in this matter. I informed both parties that they were both at liberty to make claims for damages in relation to the tenancy in accordance with the time limits provided by the *Act*.

Although the tenant's application only requested the return of the security deposit, the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. Accordingly, I have considered whether the tenant is entitled to the doubling provision in making this decision.

### Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

- 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on December 31, 2017, and the tenant provided her forwarding address to the landlord's agent on the same day.

I note that section 38(1)(b) of the *Act* states that the tenant provide the forwarding address in writing. The tenant provided her forwarding address verbally and via text message. However, given that the landlord's agent acknowledged receiving the tenant's forwarding address on December 31, 2017 via text message, I find that the tenant's forwarding address was sufficiently served pursuant to the sufficient service provisions set out in section 71 of the *Act*.

It was confirmed by the landlord's agent that the landlord had not applied for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenant did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security deposit.

I further note that the landlord extinguished the right to claim against the security deposit by failing to provide a written condition inspection report at the beginning of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24 (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.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the landlord's agent provided verbal testimony about the issue of a carpet stain left by the tenant; however, the landlord is unable to make a monetary claim through the tenant's Application.

The landlord may still file their own Application for compensation for the alleged damages caused by the tenant; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to the value of double the amount of the security deposit withheld by the landlord, less the amount of

the security deposit already returned to the tenant, with any interest calculated on the original amount only. No interest is payable for this period.

The amount of compensation owed to the tenant is calculated as follows:

Original security deposit paid by tenant = \$675.00

Doubling provision applied pursuant to section 38(6) of the *Act* = \$1,350.00

Amount of security deposit returned by landlord = \$620.00

Amount of monetary award owed to tenant = \$1,350.00 - \$620.00 = \$730.00

Therefore, the tenant is entitled to a monetary award of \$730.00 as compensation for the landlord's failure to address the security deposit in accordance with section 38 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.

Having made the above findings, I order that the landlord pay the tenant the sum of **\$830.00** in full satisfaction of the security deposit and recovery of the filing fee paid by the tenant for this application.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$830.00 pursuant to sections 38, 67 and 72 of the *Act*.

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: September 19, 2018

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Residential Tenancy Branch