# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, FFT
MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking authorization to withhold all or a portion of the security deposit or pet damage deposit for damage to the rental unit and recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking the return of double her security and pet damage deposits and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the agent for the Landlord (the "Agent"), both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Applications, the Notice of Hearing, or the documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to withhold the security deposit or the pet damage deposit paid by the Tenant?

Is the Tenant entitled to the return of all, a portion, or double her security deposit or pet damage deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed-term tenancy, which began on June 1, 2014, was set to end on September 30, 2014, and that the tenancy would be month-to-month thereafter. The tenancy agreement states that rent in the amount of $795.00 is due on the first day of each month and that a security deposit and a pet damage deposit were both paid in the amount of $397.50 and $102.50 respectively. In the hearing the parties confirmed that the Landlord still holds these amounts.

The parties agreed that on approximately January 14, 2018, the Tenant gave written notice to end the tenancy effective February 1, 2018, and that the tenancy ended on that date. The parties also agreed that condition inspections were completed at the start and the end of the tenancy in compliance with the *Act* and the regulation.

The Tenant stated that she gave her forwarding address to the Landlord by e-mail on approximately January 6, 2018, and that when the Landlord advised her e-mail was not acceptable, a written copy was placed in the Landlord's mailbox on January 7, 2018. The agent confirmed this is correct and that the Landlord received the document from the mailbox on either January 7, 2018, or January 8, 2018.

The parties agreed that three light bulbs in the rental unit were burnt out at the end of the tenancy and the Landlord sought $32.63 for the cost of replacing them; $12.63 for the cost of the lightbulbs, plus $20.00 for the hour required to purchase and install them. The Tenant stated that she did not understand that she was required to replace the light bulbs at the end of the tenancy as the Residential Tenancy Policy Guideline (the "Policy Guideline") states only that they must be replaced throughout the tenancy. Further to this, the Tenant argued that the Landlord should not be entitled to any cost for the time required to purchase and install the light bulbs as he runs a business as a Landlord. The Tenant also argued that it would not have taken the Landlord an hour to purchase and install the lightbulbs.

The Tenant argued that the Landlord was required to return her entire security deposit and pet damage deposit to her within 15 days of the end of the tenancy and therefore

sought $1,000.00 for the return of double the amount of both deposits. The Landlord argued that he was not required to return the deposits as claimed by the Tenant as he filed the Application seeking retention of these deposits within 15 days of the end of the tenancy, which is later than the date that the Tenant's forwarding address was received in writing. As a result, the Landlord argued that the Tenant is not entitled to double the amount of her deposits.

Analysis

Section 88 of the *Act* states that documents other than those listed under section 89 of the *Act*, when required to be given or served, must be given or served in one of the following ways:

- by leaving a copy with the person;
- if the person is a landlord, by leaving a copy with an agent of the landlord;
- 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;
- if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- by leaving a copy at the person's residence with an adult who apparently resides with the person;
- 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;
- 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;
- by transmitting a copy to a fax number provided as an address for service by the person to be served;
- as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*; or
- by any other means of service prescribed in the regulations.

Although the Tenant stated that a copy of her forwarding address was sent to the Landlord by e-mail on January 6, 2018, e-mail is not an acceptable method of service pursuant to section 88 of the *Act*. As a result, I do not find that the Tenant served her forwarding address on the Landlord in writing when she sent it by e-mail on January 6, 2018. Based on the testimony before me in the hearing, I find that the Landlord was served with the Tenant's forwarding address on January 8, 2018, the

latest date that the Agent stated the Landlord received it from the mailbox. In any event, both parties agreed that the tenancy ended on February 1, 2018.

Policy Guideline #17 states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit or a tenant's application for the return of the deposit. As a result, I will assess below whether the Landlord is entitled to the amounts claimed for light bulb replacement and installation, whether the Tenant is entitled to double the amount of the security deposit or pet damage deposit, or both, and offset any Monetary Order owed to the Tenant for the return of their deposits with any debt owed to the Landlord.

Although the Tenant argued that she is only responsible to replace lightbulbs throughout the tenancy and not at the end, I do not agree. Policy Guideline #1 states that tenants are responsible for replacing light bulbs in their rental unit during the tenancy. I find it contrary to common sense, the intention of the *Act*, as well as a reasonable interpretation of the Policy Guideline to infer that tenants can avoid responsibility for their unmet obligations under the *Act* by simply ending their tenancy. As a result, I find that the Tenant was in fact obligated to ensure that all of the light bulbs in the rental unit were in working order at the end of the tenancy as they clearly burnt out and were not replaced by her as required throughout the tenancy. Despite the Tenant's argument to the contrary, I also find that costs sought by the Landlord for replacement an installation of the light bulbs reasonable and the Landlord is therefore entitled to $32.63 for these costs.

Having made the above findings, I will now turn my mind to whether the Tenant is entitled to the return of all, a portion or double the amount of the security deposit or the pet damage deposit. The parties agreed that condition inspections were completed at the start and end of the tenancy and that copies of the condition inspection reports were exchanged between the parties in compliance with the *Act* and regulation. As stated above, I have also found that the Tenant's forwarding address was served on the Landlord on January 8, 2018, and that the tenancy ended on February 1, 2018.

Section 38(1) of the *Act* states the following with regards to the return of a security deposit:

**Return of security deposit and pet damage deposit**

> **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.

The Landlord's Application seeking retention of the Tenant's security deposit was filed on February 15, 2018. As the end of the tenancy was later than the date that the Landlord received the Tenant's forwarding address in writing and the Landlord's Application was received within 15 days of the end of the tenancy, I find that the Landlord has complied with section 38(1) of the *Act* in relation to the Tenant's security deposit. As a result, I dismiss the Tenant's claim for double the amount of the security deposit without leave to reapply. However, as the Landlord is only entitled to $32.63 for the replacement of lightbulbs, the Tenant is therefore entitled to the return of $364.87 of her security deposit; $397.50, less the $32.63 owed to the Landlord.

Although I have found above that the Landlord complied with the *Act* in relation to the Tenant's security deposit, the same cannot be said for the Tenant's pet damage deposit. Section 38(7) of the *Act* states that a pet damage deposit may only be used for damage caused by a pet to the residential property, unless the tenant agrees otherwise. Policy Guideline #38 states that a pet damage deposit is held by a landlord as security for damage caused by a pet and that a landlord may apply to an arbitrator to keep all or a portion of the deposit only in relation to damage caused by a pet. Further to this, the Policy Guideline states that the same rules apply to the return and retention of a pet damage deposit as to security deposits and that if a landlord is required to return a pet damage deposit and fails to do so, the tenant may be entitled to double the amount of the deposit.

In the Application the Landlord did not seek any compensation for pet damage. Based on this fact and given that there is no evidence before me that the Tenant either agreed that the Landlord could retain the pet damage deposit or that there was an outstanding monetary order for pet damage from the director at the end of the tenancy, I find that the Landlord was obligated to return the Tenant's pet damage deposit to her in full within 15

days of the end of the tenancy. As the Landlord failed to do so, I find that the Tenant is therefore entitled to $205.00; double the amount of her pet damage deposit.

Based on the above, the Tenant is therefore entitled to a Monetary Order in the amount of $569.87; $364.87 for the balance owed to her from the security deposit, plus $205.00 for the return of double the pet damage deposit.

As both parties were at least partially successful in their Applications, I find they must each bear the cost of their own filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$569.87**. 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 24, 2018

Residential Tenancy Branch