# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI GROUP
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this 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 2:15 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant C.C. attended the hearing on behalf of the tenants, and is herein referred to as "the tenant". The tenant 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 the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that she had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that she personally served the landlord's agent at the landlord's address for service provided on the tenancy agreement, on June 1, 2018 at approximately 4:00 p.m., with the Notice of Dispute Resolution Proceeding package and all her evidence. The tenant testified that she did not have a witness to this personal service.

Section 15 of Residential Tenancy Policy Guideline #12. Service Provisions explains the requirement for an applicant to prove service in the event that the respondent does not attend the hearing, as follows, in part:

> *Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.*
>
> *Where proof of service is required, the person who actually served the documents must either:*
> *• be available as a witness in the hearing to prove service, or*
> *• provide a signed statement with the details of how the documents were served.*
>
> *Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

As the tenant was the person who "actually served the documents" and she was able to provide the date and time of service, the location where service occurred, the specifics of the documents served and the name of the person who was served, I find that the tenant was able to prove service of the notice of this hearing.

As such, I find that the landlord was served with notice of this hearing and the tenant's evidence in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? If so, is the tenant entitled to a monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with section 38 of the *Act*?

Is the tenant entitled to monetary for the landlord's failure to comply with the *Act*, regulations 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 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 submitted into documentary evidence by the tenant.

In the absence of the landlord attending the hearing, the tenant provided the following undisputed testimony regarding the events pertaining to this tenancy:

- This one-year fixed term tenancy began April 1, 2017.
- Monthly rent of $1,875.00 was payable on the first day of the month.
- The tenant paid a security deposit of $935.00 and a pet damage deposit of $935.00 (for a total of $1,870.00) at the beginning of the tenancy. The tenant also paid $100.00 as a deposit for the FOB access to the building.
- A written condition inspection report was provided to the tenant several months after moving in.
- The tenant gave notice to end the tenancy effective April 30, 2018, however the tenant vacated the rental unit and returned the keys to the landlord on April 13, 2018.
- The tenant participated in a move-out condition inspection with the landlord on April 13, 2018. The tenant testified that she never received a written copy of the move-out condition inspection report.
- The tenant testified that she provided her forwarding address in writing to the landlord on April 13, 2018, which was confirmed by witness testimony provided by her mother, witness L.C., who was present at that time.
- The tenant did not provide written authorization to the landlord for any deductions from the security and/or pet damage deposits.
- To the tenant's knowledge, the landlord did not file an application for dispute resolution to retain the security and/or pet damage deposits as the tenant has not received any notice of hearing from the landlord.
- The tenant testified that there was no previous arbitration order in favour of the landlord that would allow the landlord to retain part of all of the security and/or pet damage deposits.
- The tenant continued to pursue the issue of the return of her deposits with the landlord and was successful in receiving a cheque from the landlord totalling $1,970.00 for the return of the security and pet damage deposits ($1,870.00) and

the return of the $100.00 FOB deposit. The tenant testified that the cheque was dated June 19, 2018 and the tenant received it by mail on June 27, 2018.

Although the tenant received the return of her security and pet damage deposits after filing the Application for Dispute Resolution, the tenant is still seeking monetary compensation equivalent to the amount of the security and pet damage deposits due to the landlord's failure to comply with returning the deposits within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

The tenant is also seeking monetary compensation for the cost of storage and the payment of a utility bill for the month of May 2018 after the tenancy ended. The tenant stated that she was unable to afford another rental unit because of the landlord's failure to return her deposits.

Analysis

Section 67 of the *Act* provides that an arbitrator may determine the amount of the damage or loss and order compensation to the claimant, **if an arbitrator has found that damages or loss results directly from a party not complying with the *Act*, regulations, or tenancy agreement.**

The *Act* contains comprehensive provisions on dealing with security and/or pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security and/or pet damage 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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

I note that the tenant has included the $100.00 cost of the FOB deposit in her request for compensation under section 38 of the *Act*. However, section 38 of the *Act* only applies to security and pet damage deposits, therefore the tenant is not entitled to compensation under the *Act* regarding the FOB deposit.

At no time does the landlord have the ability to simply keep all or a portion of the security and/or pet damage 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 and/or pet damage 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 April 13, 2018, and the landlord was also in receipt of the tenant's forwarding address as of April 13, 2018.

Therefore, the landlord had 15 days from April 13, 2018, to address the security and pet damage deposits in accordance with the *Act*. The tenant has testified that the landlord returned the deposits to her via a cheque dated June 19, 2018, which is clearly beyond the 15 days allowed under the *Act*.

The tenant confirmed that she had not been served with any application for arbitration by the landlord to retain all or a portion of the security and/or pet damage deposits.

The tenant confirmed that she did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security and/or pet damage 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 end of the tenancy. This extinguishment is explained in section 36(2) of the *Act*, as follows:

> 36 (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
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> (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
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> (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.

The landlord may only keep all or a portion of the security and/or pet damage deposits 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 deposits.

Based on the above legislative provisions and the testimony and evidence before me, on a balance of probabilities, I find that the landlord failed to address the security and pet damage deposits 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 of $1,870.00, which is equivalent to double the value of the security and pet damage deposits paid by the tenant at the beginning of the tenancy, less the amount of the security and pet damage deposits returned by the landlord in June 2018, with any interest calculated on the original amount only. No interest is payable for this period.

The tenant is also claiming compensation for the cost of storage due to her inability to afford another rental unit while she awaited the return of her security deposit, and a utility bill overpayment. There may be many factors which impacted the tenant's ability to afford another rental unit. As such, I do not find that the tenant's decision to put her belongings in storage has resulted in a loss that stemmed directly from the landlord's contravention of the *Act* or tenancy agreement. The tenant did not submit the actual utility bill into evidence, nor did the tenant provide any evidence of correspondence between her and the utility company attempting to resolving the issue. As such, I do not

find there is sufficient evidence provided by the tenant to prove that her overpayment of the utility bill was a result of the landlord's failure to comply with the *Act* or tenancy agreement.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find that the tenant is not entitled to compensation for these items and as such the tenant's claim for these costs is dismissed without leave to reapply.

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

In summary, I order that the landlord pay the tenant the sum of **$1,970.00** in full satisfaction of compensation to the tenant for failing to comply with section 38 of the *Act*, 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 $1,970.00 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: November 21, 2018

Residential Tenancy Branch