



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTION DECISION

Dispute Codes MNDL-S, MNDCL, FFL, MNDCT, MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Section 78 of *Residential Tenancy Act* enables the Residential Tenancy Branch to correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or deal with an obvious error or inadvertent omission in a decision or order.

In my original decision I recorded the following testimony and made the following findings:

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on June 30, 2018. Monthly rent in the amount of \$1,900.00 was payable on the first day of each month. A security deposit of \$950.00 and a pet damage deposit of \$950.00 were paid by the tenant to the landlord. The landlord is currently holding both deposits and filed for dispute resolution to retain the deposits on July 16, 2018. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a move in inspection and inspection report were completed and signed by both parties on June 29, 2017. The move in inspection report was entered into evidence. Both parties agree that a move out condition inspection was completed by both parties and that the tenant refused to sign the move out inspection report because she did not agree with the damage assessment.

[...]

Both parties agree that in a letter dated June 18, 2018, the tenant provided the landlord with 10 days' notice of her intention to move out prior to the effective date on the Two Month Notice. The letter dated June 18, 2018 also stated the tenant's forwarding address for the return of her deposits.

[...]

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case, the tenancy ended on June 30, 2018 and the tenant's forwarding address was provided to the landlord in writing on June 18, 2018. Pursuant to section 38 of the Act, the landlord had 15 days from the end of the tenancy to file for dispute resolution, in this case, the landlord had until July 15, 2018 to file. The landlord filed for dispute resolution on July 16, 2018, one day late. I therefore find that the tenant is entitled to receive double her security and pet damage deposits as per the below calculation:

\$950.00 (security deposit) * 2 (doubling provision) = \$1,900.00

\$950.00 (pet damage deposit) * 2 (doubling provision) = \$1,900.00

Total = \$3,800.00

In the Request for Correction, the applicant wrote:

The director has failed to address the fact that the tenant did not sign the move out inspection. Section 36(1) of the Residential Tenancy Act states that:

The tenant's right to return of the deposit "is extinguished" if the tenant did not participate in the inspection.

Therefore, the arbitrator has mistakenly awarded double the deposit to the tenant, despite the fact that the tenant's right to the deposit was extinguished by the tenants failure to sign the move out condition report as required by section 36(1) of the Residential Tenancy Act.

Section 36(1) of the *Act* states that 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 complied with section 35 (2) [2 opportunities for inspection], and
- (b) the tenant has not participated on either occasion.

As stated in my original decision, both parties agreed that a move out condition inspection was completed by both parties. Section 36(1)(b) of the *Act* extinguishes the tenant's right to the return of the security and pet deposits if the tenant does not participate in the move out inspection and the landlord provided the tenant with two opportunities to complete the inspection, the last being in writing. As both parties testified that both parties participated, the tenant's right to the return of the deposits is not extinguished. The tenant's decision not to sign the move out inspection report does not extinguish her right to the return of the deposits.

I decline to make any correction and I confirm my original decision.

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: December 19, 2018

Residential Tenancy Branch