



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlord and the tenant both appeared at the hearing. The landlord was assisted by D.R. and the landlord presented a witness, L.V. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's evidence but she claimed she did not receive a copy of the Notice of Hearing from the tenant. The landlord testified that she obtained a copy of the Notice of Hearing from the Residential Tenancy Branch. Both parties acknowledged receipt of each other's evidence and neither party raised any objections regarding service. I find the landlord was sufficiently served the Notice of Hearing and Application for Dispute pursuant to section 71(2)(b) of the *Act*

Preliminary Matter: Name Correction

The tenant testified that his application stated the incorrect name for the landlord. I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to a return of all or a portion of his security deposit from the landlord pursuant to section 38?

If so, is the tenant entitled to an amount equal to double the security deposit pursuant to section 38?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The tenancy agreement had a commencement date of June 1, 2017 but the tenant moved in early on May 22, 2017. The monthly rent was \$950.00 and the tenant paid a security deposit of \$475.00.

The landlord presented a copy of the residential tenancy agreement written in Chinese, with an official English translation, which stated that the tenant was to provide services including taking out the trash every two weeks. The tenant claimed that the landlord frequently reminded him to take out the trash which he claimed as harassing. The tenant also claimed that he should not have been required to remove the landlord's trash in addition to his own trash. The tenant requested a monetary award in compensation for taking out the landlord's trash.

The landlord sent the tenant a notice of rent increase dated July 30, 2019 which increased the rent by \$30.00, from \$950.00 to \$980.00 per month, effective October 1, 2018.

The tenant complained the that landlord entered his rental unit multiple times without providing 24 hour advanced notice and the tenant requested a monetary order for compensation for these inspections. The landlord testified that she only conducted one inspection of the tenant's rental unit and she provided more than 24 hours advanced notice before that inspection.

A Mutual End to Tenancy form was signed by both parties on July 31, 2018 stating a termination date of October 31, 2018. The Mutual End to Tenancy included additional terms which reduced the rent to \$800.00 per month from August 1, 2018 with a \$30.00 increase to \$830.00 on October 1, 2018. The landlord testified that the rent was decreased by \$150.00 to induce the tenant into agreeing to end the tenancy agreement.

Both parties testified that the tenant actually paid \$950.00 in rent from the start of the tenancy until July 1, 2018 and the tenant then paid \$800.00 per month from August 1, 2018 until the end of the tenancy in October 2018.

The tenant moved out of the rental unit on October 31, 2018. The tenant testified that the landlord wrote a condition inspection report in Chinese upon move-out. The tenant testified that he understands some Chinese but he has difficulty reading it. The landlord testified that the tenant damaged the rental unit and the tenant orally agreed to deduct the repair costs, the amount to be calculated later, from the security deposit. The landlord's witness, L.V. testified that he witnessed the move-out and he also testified the tenant agreed to deduct the repair costs from the deposit. The tenant testified that he did not agree to any deductions from his security deposit.

The tenant sent the landlord a letter on November 7, 2018, providing his forwarding address. The letter stated that the tenant did not agree to releasing any portion of his security deposit.

The landlord testified that she sent the tenant a letter by registered mail to his forwarding address on November 15, 2019 claiming \$345.00 in damages to the rental unit. The landlord enclosed a cheque for \$130.00 with the letter as a partial refund of the security deposit. The landlord testified that the letter was never picked up by the tenant and it was eventually returned to the landlord by Canada Post on December 7, 2018. The landlord put the envelope into the tenant's mailbox on December 19, 2018. The tenant acknowledged receiving the letter and the cheque for \$130.00 but the tenant testified that he did not deposit the cheque. The tenant is requesting a monetary award for the double the amount of the security deposit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss

and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The tenant has requested compensation for having to take the trash out and for the landlord frequently reminding him to take the trash out. I find that the tenant has failed to provide any basis under the tenancy agreement or the *Act* to support this claim for damage. In fact, the tenancy agreement specifically requires the tenant to take the trash out. As such, the tenant as not suffered any loss as a result of taking out the trash. Accordingly, I dismiss the tenant's request for compensation relating to the trash.

The tenant has also requested compensation for the rent increase. However, even though the landlord did provide notice of a rent increase, both parties testified that the tenant never actually paid the increased rent. As such, I dismiss the tenant's claim for compensation relating to the notice of rent increase.

The tenant also requested compensation for the landlord's entry into the rental unit without proper notice. I find that the tenant has provided insufficient evidence to establish on the balance of probabilities that the landlord accessed the rental unit improperly. In support of this claim, the tenant presented text messages printed in Chinese which I could not read. The tenant was unable to provide dates or specific details of the alleged entries. The landlord testified that she only performed one inspection and she provided adequate advanced notice before the inspection. I find that there is insufficient evidence to establish that the landlord entered the rental unit improperly consequently I dismiss this claim.

The tenant also requested return of double of his security deposit. Section 38 of the *Act* states that:

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.

Based on the agreed testimony of both parties, I find that the tenancy ended on October 31, 2018 and the tenant provided her forwarding address in writing on November 7, 2018.

The landlord had 15 days after the end of the tenancy and the delivery the tenant's forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the forwarding address was provided on November 7, 2018, the landlord's deadline to repay the deposit or file an application for dispute resolution was November 22, 2018.

I find that the landlord did not perform either of these requirements by the November 22, 2018 deadline. Although I find that the landlord did timely send a partial refund of the security deposit \$130.00 on November 15, 2018, the landlord was required to provide a refund of the entire security deposit or file an application for dispute resolution. However, the landlord did not do so.

Furthermore, the landlord argued that she had an agreement with the tenant to retain the deposit, which the tenant denied. However, section 38(4) only permits a landlord to retain a deposit if there is a written agreement to retain the deposit. The landlord

admitted that the agreement was not written and section 38(4) does not permit a landlord to retain a deposit based on an oral agreement.

Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*. However, the landlord is still at liberty to file an application for dispute resolution regarding any claims for damages to the rental unit.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit and pet damage deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit and pet damage deposit.

I find that the total security deposit held by the landlord to be \$475.00. Accordingly, I find that the tenants are entitled to an award of \$950.00, being double the amount of security deposit pursuant to section 38(6) of the *Act*. However, the landlord is entitled to a credit of \$130.00 for the partial payment which the tenant has already received.

The total award to tenants is accordingly \$820.00 as set forth below:

<u>Item</u>	<u>Amount</u>
Recovery of double the deposits (\$475.00.00 times 2)	\$950.00
Less credit for partial refund of deposit	-\$130.00
Total award to tenant	\$820.00

Conclusion

I grant the tenant a monetary order in the amount of **\$820.00**. If the landlord fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: April 11, 2019

Residential Tenancy Branch