



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, 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 for reimbursement of utility payments pursuant to section 67;
- refund of her security deposit pursuant to section 38;
- an order for compensation of double the security deposit pursuant to section 38; and,
- reimbursement of the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses.

Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the Act.

The parties had a previous application for dispute resolution regarding the issues which was dismissed with leave to reapply. The file number for the previous hearing is referenced on the first page of this decision.

### 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 for reimbursement of utility payments pursuant to section 67?

Is the tenant entitled to a refund of her security deposit pursuant to section 38?

Is the tenant entitled to an order for compensation of double the security deposit pursuant to section 38?

Is the tenant entitled to reimbursement of the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenancy started on February 1, 2018. The tenant testified that the monthly rent was \$1,850.00 and she paid a \$925.00 security deposit. The landlord testified that the tenant also paid an additional \$200.00 security deposit for utilities.

The tenancy agreement checked off the boxes for water, electricity and heat as included services and facilities on page two of the tenancy agreement. The landlord testified that these boxes only meant that access to these utilities would be available, not that the landlord would provide the utilities to the tenant for free. The tenancy agreement also checked off the box at paragraph 17 which indicated that an addendum was attached.

The landlord testified that the tenancy agreement included additional terms on a document entitled "Supplementary Terms" which was written entirely in Chinese. The landlord provided a translated version of the Supplementary Terms as evidence. The translation of the Supplementary Terms included a provision which stated:

1. Rent includes utilities of property taxes, electricity and gas, which are based on actual amount of current month pro-rated per number of occupants in the premise. The utility amount is payable with the rent of the following month.

The tenant testified that she vacated the rental unit on August 21, 2018 whereas the landlord testified that she left on September 1, 2019. The landlord testified that a partial refund of \$275.00 was made to tenant on September 3, 2018. In addition, the landlord testified that an electronic transfer of \$781.30 to the tenant was attempted on September 19, 2018 but the tenant rejected the transfer.

Both parties testified that the landlord had requested a forwarding address for the tenant but the tenant has not yet provided her forwarding address.

### Analysis

The tenant has made an application for compensation for payment of the utilities and for a return of double the security deposit. I will address each claim separately.

### *Utilities*

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.

Based on the evidence submitted in this matter, I find that the tenant has not provided sufficient evidence to establish that she overpaid the utilities to the landlord. The tenant has not provided any evidence, either documentary or testimonial evidence, to establish that the tenant even paid utilities to the landlord.

Further, I find that the Supplementary Terms formed part of the tenancy agreement. The Supplementary Terms are specifically referred to in paragraph 17 of the tenancy agreement. Further, the parties signed the supplementary terms at the same time the tenancy agreement was executed. Accordingly, I find that the Supplementary Terms are part of the tenancy agreement.

By reading the tenancy agreement in conjunction with the Supplementary Terms, I find that, more likely than not, the parties had an agreement whereby the tenant was responsible for paying utility payments to the landlord in addition to rent. As such, I find that the tenant has failed to provide sufficient evidence to establish that she overpaid utilities to the landlord.

For the above reasons, I dismiss the tenant's application for reimbursement of utility payments without leave to reapply.

### *Security Deposit*

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

In this case, both parties testified the tenant has not provided her forwarding address. As such, I find the tenant's application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*. As such, I dismiss the tenant's application for double the security deposit with leave to reapply.

Since the tenant has not prevailed in this matter, I dismiss the tenant's application for reimbursement of the filing fee pursuant to section 72 of the *Act* without leave to reapply.

### Conclusion

I dismiss the tenant's application for a monetary order for the payment of the utilities without leave to reapply.

Accordingly, I dismiss the tenant's application with leave to reapply to request the return of double the security deposit.

I dismiss the tenant's application for recovery of the filing fee without leave to reapply.

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: June 27, 2019

---

Residential Tenancy Branch