



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

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

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant attended with an assistant B.C. to assist with translation, and are herein referred to collectively as "the tenant".

At the outset, the landlord requested for me to arrange for someone to assist him with translation. I advised the landlord that it is his responsibility to have arranged to have an assistant with him to assist him with translation, as the tenant had done. I offered the landlord the opportunity to call a friend or family member or any other person to join him on the teleconference to assist him with translation, however, he declined that offer and confirmed that he would be able to manage on his own. I also offered to have the tenant's assistant B.C. to provide translation in the event something was said that the landlord was unable to understand, and on two occasions during the hearing, the tenant was able to explain the context of the questions asked and answered through translation to the landlord.

As both parties were present, service of documents was confirmed. The tenant testified that the landlord was served with her application for dispute resolution and evidence by Canada Post Xpresspost mail with signature option on February 7, 2019 and provided a

Canada Post Xpresspost mail tracking number as proof of service. The landlord confirmed receipt of the tenant's application for dispute resolution. Therefore, I find that the tenant's application and evidence was served in accordance with section 89 of the *Act*.

The landlord confirmed that he did not submit any evidence for this matter.

#### Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of the security deposit? And if so, Is the tenant entitled to any statutory compensation equivalent to the amount of the security deposit for the landlord's failure to comply with the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### 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.

Both parties agreed to the following information about their written tenancy agreement:

- The tenancy began on June 20, 2018 as a fixed-term tenancy scheduled to end on August 8, 2018.
- Monthly rent of \$2,100.00 was payable on the 20<sup>th</sup> of the month.
- At the beginning of the tenancy, the tenant paid the landlord a security deposit of \$2,100.00, which the landlord continues to hold.

I advised the parties that the landlord contravened the *Act* by requiring more than the allowable one-half of the rent payable for the security deposit. However, as the tenancy is now over the tenant cannot deduct the overpayment from rent, therefore I have addressed the full amount of the security deposit in consideration of the tenant's claim.

The parties agreed that the tenant requested to stay on in the rental unit for an additional 3 days at the end of the tenancy, therefore she did not vacate the rental unit until August 11, 2018 at which time the tenancy ended.

Both the landlord and the tenant agreed that the landlord never provided the tenant with a copy of any written condition inspection report of the rental unit at the beginning nor the end of the tenancy.

The tenant testified that the landlord was served with the tenant's forwarding address on January 14, 2019 by Canada Post registered mail and submitted a copy of the Canada Post registered mail receipt with tracking number and a copy of the registered mail tracking report showing that the letter was delivered and signed for as received on January 16, 2019. At first the landlord testified that "maybe" he received the letter but that he was "not sure". When asked again to confirm whether or not he had received the tenant's forwarding address by registered mail in January 2019 the landlord confirmed that he had received it.

The parties confirmed that they had discussed deductions to the security deposit. The tenant agreed that the landlord could deduct the three days of rent totalling \$210.00 from August 8 to 11, 2018 from the security deposit.

The tenant testified that the landlord stated the tenant was responsible for a fine of \$200.00 for smoking on the balcony. As well, at the end of the tenancy, despite the tenant hiring a cleaning company to clean the rental unit, the landlord requested to deduct \$150.00 for cleaning as he was not satisfied with the standard of the cleaning.

The tenant testified that they agreed to these deductions as they wished to ensure they received the return of the remaining \$1,540.00 of the security deposit held by the landlord. The tenant submitted into documentary evidence a copy of the letter dated January 14, 2019 sent to the landlord confirming in writing the understanding that these three deductions would be withheld from the security deposit and requesting that the landlord return the remaining amount of the security deposit, that being \$1,540.00.

The landlord stated that there were damages to a cabinet door for which he is seeking compensation and therefore the rest of the security deposit was not returned.

The landlord confirmed that he did not file an application for dispute resolution to retain the security deposit.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenant's application for the return of the security deposit, and that any testimony in relation to the alleged cabinet damages was not relevant for

making a determination in this matter. I informed both parties that they were both at liberty to make claims for damages in relation to the tenancy in accordance with the time limits provided by the *Act*.

I also provided the parties an opportunity to come to a settlement of both the issue of the security deposit and the landlord's alleged issue of damage to a cabinet door, however, the parties were unable to come to an agreement, so I advised the parties that I would proceed with making an arbitrated decision in the matter pertaining to only that which was before me, being the tenant's claim for the return of the security deposit.

Although the tenant's application only requested the return of the security deposit, the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. In this case, the tenant did not waive their entitlement for consideration of doubling of the deposit. Accordingly, I have considered whether the tenant is entitled to the return of double the amount of the security deposit in making this decision.

### Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security 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
- (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.

...

- (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.

At no time does the landlord have the ability to simply keep the security 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 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 landlord did not apply for arbitration within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenant agreed, in a letter in writing, that the landlord could retain \$560.00 of the security deposit in satisfaction of \$210.00 for rent owed for the tenant's occupation of the rental unit from August 8 to 11, 2019; \$200.00 for a smoking bylaw fine; and \$150.00 for cleaning.

Therefore, I find that the tenant provided her agreement to a total deduction from the security deposit in the amount of \$560.00.

The landlord may only keep all or a portion of the security deposit 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 all of the security deposit, and only had agreement from the tenant to keep \$560.00 of the security deposit.

I note that the landlord provided verbal testimony about damage to a cabinet door; however, the landlord is unable to make a monetary claim through the tenant's Application.

The landlord may still file his own Application for compensation for the alleged damages caused by the tenant; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlord failed to address the security deposit 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 equivalent to the value of double the amount of the security deposit withheld by the landlord without their agreement, with any interest calculated on the original amount only. No interest is payable for this period.

The amount of compensation owed to the tenants is calculated as follows:

Original security deposit paid = \$2,100.00

Amount tenant agreed that landlord could withhold for rent = \$560.00

Amount of security deposit withheld by landlord without tenant's agreement = \$1,540.00

Doubling provision applied to \$1,540.00 = \$3,080.00

Therefore, the tenants are entitled to a monetary award of \$3,080.00 as compensation for the landlord's failure to address the security deposit in accordance with section 38 of the *Act*.

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

Having made the above findings, I order that the landlord pay the tenant the sum of **\$3,180.00** in full satisfaction of the security deposit 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 \$3,180.00 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: June 5, 2019

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Residential Tenancy Branch