# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes **MNDCT MNSD**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*; and
- An order for the landlord to return the security deposit pursuant to section 38.

RM attended for the landlord ("the landlord"). The tenant attended and called her mother AS as an affirmed witness.

The landlord acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised by the landlord. I find that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*.

The landlord submitted evidentiary materials. The tenant did not acknowledge receipt of the documents. The landlord testified he did *not* serve the documents on the tenant as he did not know he was required to do so. Accordingly, as the documents were not served upon the tenant as required under the *Act*, I did not permit the landlord to refer to the contents of the documents during the hearing and I will not consider the landlord's written evidence in my decision.

Despite my ruling with respect to admissibility of the landlord's documents at the outset of the hearing, the landlord repeatedly referred to the documents; throughout the hearing, the landlord challenged my authority and reasons for making the order declining admissibility.

During the hearing, the landlord claimed to have been involved in previous arbitrations in which the hearings proceeded differently from the present arbitration. The landlord frequently criticized the Arbitrator's conduct of the hearing; he often frequently interrupted the Arbitrator and the tenant despite repeated warnings from the Arbitrator. At the end of the arbitration, the landlord apologized for his conduct.

*Preliminary Issue: Jurisdiction*

The parties agreed that the tenant rented a unit from the landlord for several months. However, the landlord objected to the jurisdiction of the Arbitrator to hear the matter as the unit was in a travel accommodation self-described as a "lodge" and being akin to a motel. As the *Act* does not apply to "travel and vacation accommodation", the landlord submitted that the Arbitrator did not have jurisdiction to hear this matter.

*Analysis*

Section 2(1) of the Act states that the Act applies to tenancy agreements, rental units and other residential property, as follows:

> ***What this Act applies to***
> *2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.*

Section 1 defines "tenancy" and "tenancy agreement":

> *"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;*
>
> *"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit*;

Section 4(3) of the *Act* states as follows:

> *This Act does not apply to living accommodation occupied as vacation or travel accommodation.*

*Residential Tenancy Policy Guideline #19* notes:

> *The Residential Tenancy Act does not apply to living accommodation occupied as vacation or travel accommodation. If a property owner or their agent rents out their unit or property as a vacation or travel accommodation, they have no recourse through the Residential Tenancy Branch for relief under the Act.*

This issue is expanded upon by *Policy Guideline #27* which examines the subject of jurisdiction in detail. It states as follows:

> *The Act does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if it is rented under a tenancy agreement, e.g. a winter chalet rented for a fixed term of 6 months, the RTA applies…whether a tenancy agreement exists depends on the agreement.*

The parties agreed the tenant rented a unit from the landlord from December 16, 2018 for about four months until the tenant vacated on April 7, 2019. The tenant lived in the unit which was similar to a small, self-contained apartment.

The tenant provided a copy of the first receipt for rent dated December 18, 2018. On the upper left corner of the receipt is the name of the renting business which included the word “Lodge”. The receipt stated the rent is for rent of $425.00 and a deposit of $425. 00. No tax is indicated.

Rent was $850.00 a month thereafter, increasing to $950.00 on March 1, 2019, which continued until the tenant vacated.

The parties testified to disputes which arose between them resulting in the landlord serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 18, 2019 which was issued in the standard RTB form.

The landlord claimed that the Arbitrator has no jurisdiction pursuant to section 4(3) as the unit was in a motel (“lodge”).

The tenant states the agreement, although verbal, was a standard month to month tenancy with monthly rent payable at the first of the month after the initial two weeks. The tenant points out the use by the landlord of the RTB Ten-Day Notice form.

*Conclusion*

After having carefully considered the evidence and following a review of the appropriate legislation and the applicable *Policy Guidelines,* I find I have jurisdiction to consider the tenant's application. I find the property was rented as residential tenancy as occupied by the tenant and as contemplated by sections 1 and 2 of the *Act*.

Furthermore, I find there are no terms and conditions to which the parties agreed which support the landlord's assertion that this unit was not rented as a tenancy, but rather as a vacation or travel rental; also, no tax was applied by the landlord which would be in keeping with a travel or vacation rental. Specifically, I find no terms that would normally fall within the scope of what would typically be contained in a travel or vacation agreement. For these reasons, I accept jurisdiction on the matter.

*Preliminary Issue 2: Section 38 Doubling*

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

The background, above, is not repeated in this section.

In summary, the tenant claims reimbursement of double the security deposit ($425.00 x 2) as the landlord did not return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing.

The tenant testified she provided the landlord with her forwarding address in writing at the beginning of the tenancy. The tenant testified she and her mother also personally hand delivered the forwarding address in writing to the landlord at the end of the tenancy. The tenant's mother was called as a witness at the hearing and provided affirmed testimony in this regard. The landlord stated he did not remember getting the forwarding address on either occasion.

The landlord claimed the tenant owed him money for rent.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act,* the landlord is required 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 the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states 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.*

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

> *(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*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided her forwarding address in writing pursuant to section 38(1)(b) at the beginning of the tenancy on December 18, 2019 and again at the end of the tenancy and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a). in accepting the tenant's evidence in this regard, I have considered the supporting evidence of her witness, her mother, and the evasive demeanor and unreliable evidence of the landlord. I find the tenant's version of events to be more credible.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit. Accordingly, I grant the tenant a monetary award in the amount of $850.00 (2 x $425.00).

The landlord may still file an application for alleged damages and outstanding rent. However, the landlord is unable to make a monetary claim through the tenant's application pursuant to Rules of Procedures 2.1 which states as follows:

*2.1 Starting an Application for Dispute Resolution*
*To make a claim, a person must complete and submit an Application for Dispute Resolution.*

Therefore, the landlord must file their own application to keep the deposit within the 15 days of certain events, as explained above.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of $850.00.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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 15, 2019

Residential Tenancy Branch