



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNRT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 15, 2019 (the “Application”). The Tenant applied to be paid back for the cost of emergency repairs made during the tenancy and for reimbursement for the filing fee.

The Tenant filed an amendment May 17, 2019 removing the claim for “other” and adding a request for the return of post-dated cheques provided to the Landlord (the “Amendment”).

The Tenant appeared at the hearing. Nobody appeared for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. The Tenant provided affirmed testimony.

The Application named two tenants; however, the tenancy agreement submitted shows the second tenant was an occupant and not a tenant. I have therefore removed the second tenant from the style of cause.

The Tenant had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package, Amendment and Tenant’s evidence. The Tenant testified that the hearing package, Amendment and evidence were sent by registered mail to the Landlord’s residence. The Tenant had submitted the customer receipt for this which has Tracking Number 1 on it. The Tenant had also submitted the Canada Post website information for Tracking Number 1 which shows the package was sent May 17<sup>th</sup> and available for pickup May 21<sup>st</sup>. The Tenant testified that she was aware of the Landlord’s address as the Landlord lived in the same building as the rental unit throughout the tenancy. The Tenant advised that the Landlord’s building address is

on the tenancy agreement which had been submitted as evidence. The Tenant testified that the tenancy ended February 28, 2019.

Based on the undisputed testimony of the Tenant, customer receipt and Canada Post website information, I find the Landlord was served with the hearing package, Amendment and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). The Landlord is deemed to have received these pursuant to section 90 of the *Act*. Based on the Canada Post website information submitted, I find the hearing package, Amendment and evidence were served in sufficient time prior to the hearing.

As I was satisfied with service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

In the Application, the Tenant sought \$11.99 for emergency repairs and \$475.00 as return of her security deposit. The Tenant submitted a Monetary Order Worksheet seeking double the security deposit.

#### Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to be paid back for the cost of emergency repairs made during the tenancy?
3. Is the Tenant entitled to return of cheques provided to the Landlord?
4. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. It is between a company as the landlord and the Tenant in relation to the rental unit. The Tenant testified that the Landlord dealt with the tenancy matters and signed the tenancy agreement on behalf of the company. The tenancy started May 01, 2016 and was a month-to-month tenancy.

The Tenant testified that rent was \$975.00 at the end of the tenancy. Rent was due on or before the first day of each month. The Tenant paid a \$475.00 security deposit.

As stated above, the Tenant testified that the tenancy ended February 28, 2019.

The Tenant testified that she provided the Landlord with her forwarding address in writing in a letter on January 30, 2019. A copy of the letter was submitted as evidence. The Tenant testified that this was left under a carpet outside the Landlord's door.

The Tenant testified that she also provided the forwarding address to the Landlord on the move-out Condition Inspection Report on March 05, 2019. A copy of this was submitted as evidence.

The Tenant further testified as follows. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to the RTB to keep the deposit.

The Tenant testified that she and someone for the Landlord did a move-in inspection April 30, 2016. She testified that she and the Landlord did a move-out inspection March 05, 2019.

The Tenant sought \$11.99 for repairs she paid for during the tenancy. The repair was of a leaky faucet in the kitchen.

The Tenant sought return of post-dated cheques provided to the Landlord during the tenancy. She testified that the Landlord still has cheques for March of 2019 to December of 2019 for rent and storage. The Tenant also testified that the Landlord has a paint deposit cheque for \$475.00. The Tenant had submitted a copy of this cheque.

### Analysis

#### ***Security Deposit***

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the

tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Both landlords and tenants can extinguish their rights in relation to the security deposit under sections 24 and 36 of the *Act*.

Based on the undisputed testimony of the Tenant and Condition Inspection Report submitted, I accept that the Tenant participated in the move-in and move-out inspections and find she did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the undisputed testimony of the Tenant and January 30, 2019 letter submitted, I accept that the tenancy ended February 28, 2019. Based on the undisputed testimony of the Tenant and Condition Inspection Report submitted, I accept that the Tenant provided the Landlord with her forwarding address on March 05, 2019 on the move-out Condition Inspection Report. I am satisfied the Landlord received the forwarding address on March 05, 2019 given it was provided on the move-out Condition Inspection Report.

I find March 05, 2019 to be the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from March 05, 2019 to repay the security deposit or claim against it. I accept the undisputed testimony of the Tenant that the Landlord did neither. I have no evidence before me that the Landlord did either. Therefore, I find the Landlord failed to comply with section 38(1) of the *Act*.

Based on the undisputed testimony of the Tenant, and my findings above, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*. Therefore, the Landlord must return \$950.00 to the Tenant. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

### ***Emergency repairs***

The Tenant sought \$11.99 for emergency repairs.

Section 33 of the *Act* states:

33 (1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I am not satisfied based on the testimony of the Tenant or evidence submitted that the leaky kitchen faucet was an emergency repair as that term is defined in the *Act*. I am not satisfied based on the Tenant's description that this was an urgent situation.

I decline to consider the compensation sought under any other section of the *Act* given the Landlord was not at the hearing to provide her position on this. The Tenant applied to be paid back for an emergency repair and has failed to show that the repair done was an emergency repair. I decline to order the Landlord to reimburse the Tenant for this cost.

### ***Return of cheques***

Section 12 of the *Act* states:

12 The standard terms are terms of every tenancy agreement

(a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and

(b) whether or not the tenancy agreement is in writing.

Section 14 of the *Act* states:

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

Section 13 of the *Residential Tenancy Regulation* (the "*Regulations*") states:

13 (1) A landlord must ensure that a tenancy agreement contains the standard terms.

(1.1) The terms set out in the schedule are prescribed as the standard terms...

The Schedule in the *Regulations* includes the following:

Payment of rent

5...

(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

Based on the undisputed testimony of the Tenant, I accept that the Landlord still has cheques provided during the tenancy. These cheques should be returned to the Tenant.

Section 62 of the *Act* states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Landlord is ordered to return the Tenant's rent cheques to her at the forwarding address provided on the move-out Condition Inspection Report within two weeks of the date of this decision. The Landlord is to use a service method set out in section 88 of the *Act* to return the cheques.

Pursuant to section 19 of the *Act*, the Landlord had no authority to collect the paint deposit cheque over and above the security deposit and therefore is ordered to return this cheque with the rent cheques.

I am not satisfied I have authority to order the return of the storage cheques as I am not satisfied these relate to the tenancy versus a separate agreement between the parties. However, the Landlord should return these cheques with the rent cheques and paint deposit cheque.

### ***Filing fee***

Given the Tenant was successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Landlord must pay the Tenant \$950.00 as double the security deposit and \$100.00 as reimbursement for the filing fee. I issue the Tenant a Monetary Order in the amount of \$1,050.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails 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.

The Landlord is ordered to return the Tenant's rent cheques and paint deposit cheque to her at the forwarding address provided on the move-out Condition Inspection Report within two weeks of the date of this decision. The Landlord is to use a service method set out in section 88 of the *Act* to return the cheques.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 25, 2019

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Residential Tenancy Branch