



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT MNSD**

### Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The tenant attended the hearing as did both of the landlords, represented by co-landlord, DK ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution Proceedings Package and evidence and the tenant acknowledged receiving the landlord's evidence. Neither party took issue with timely service of documents.

### Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

### Issue(s) to be Decided

Should the tenant's security deposit be returned to her?

Should the security deposit be doubled?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

The parties agree on the following facts. On February 1, 2016, the tenant and a previous co-tenant moved into the rental unit under a 6 month fixed term tenancy agreement to expire on August 1<sup>st</sup>. A security deposit of \$750.00 was collected from the two tenants at the time, however no condition inspection report was signed by the parties at commencement. The landlord continues to hold the \$750.00 security deposit that was left by the co-tenants.

A second tenancy month to month agreement was signed between the 2 co-tenants and the landlords, to commence on August 1, 2016 however that tenancy agreement ended when the co-tenant moved out of the rental unit within that month. The remaining tenant, the applicant/tenant in these proceedings, remained as a sole tenant in the rental unit pursuant to a third tenancy agreement that commenced on September 1, 2016. Copies of all 3 tenancy agreements were provided as evidence by the landlord.

On February 2, 2019, the parties signed a mutual agreement to end tenancy with an effective date of April 1, 2019. A subsequent mutual agreement to end tenancy was signed on March 15, 2019 ending the tenancy on that date. The parties agree that the tenant paid rent up to and including March 15, 2019.

The parties agree that no condition inspection report was conducted at the conclusion of the tenancy. The tenant testified that she provided the landlord with written notice of her forwarding address by registered mail on March 20, 2019 and provided the tracking number for the mailing which is provided on the cover page of this decision.

The landlord testified he received the tenant's forwarding address shortly after March 20<sup>th</sup>, however he's not sure about the date. When the tenant moved out, there was damage to the unit including a damaged floor, leftover garbage and a boarded up crawlspace was broken into and used for storage space. As well, the tenant's children used the landlord's plywood to create a recreational ramp for sports and left the remaining plywood in the rain to become un-useable.

The landlord testified that he thought the original co-tenant from 2016 may be entitled to recover half of the security deposit since it was originally left by her. He was not provided with a forwarding address by her and he was unsure about whether the tenant/applicant in these proceedings should be entitled to it. He did not conduct a condition inspection report with either the tenant or the previous co-tenant at the commencement of the tenancy as he is new to being a landlord and did not know that was his responsibility.

### Analysis

The rights and obligations of the previous co-tenant ended when the landlord and the remaining tenant entered into a new tenancy agreement (the 3<sup>rd</sup> tenancy agreement) that commenced on September 1, 2016, more than three years ago.

The previous co-tenant is not entitled to claim against the security deposit as her right to do so is barred by section 60(2) of the Residential Tenancy Act which states:

*despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3)*

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the rental unit with the tenant, as required by section 23 of the Act. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Secondly, section 38(1) and (6) of the Act addresses the return of security deposits.

(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.

...

(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.

In accordance with sections 88 and 90 of the *Act*, the tenant's forwarding address is deemed served on March 25, 2019, five days after it was mailed out on March 20, 2019. The landlord does not dispute he received the tenant's forwarding address shortly after it was sent. The landlord did not file for dispute resolution within 15 days of receiving the tenant's forwarding address, or by April 9, 2019.

The landlord's right to claim against the security deposit was extinguished for his failure to do a condition inspection report with the tenant at the commencement of the tenancy, contrary to section 24. Second, the landlord did not return the security deposit or file a claim against it within 15 days of receiving the tenant's forwarding address contrary to section 38(1)(b).

The language of section 38(6)(b) is mandatory. The landlord must pay the tenant \$1,500.00, representing a doubled security deposit.

As the tenant's application was successful, the tenant is also entitled to recover the \$100.00 filing fee for the cost of this application.

#### Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$1,600.00**.

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: November 18, 2019

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Residential Tenancy Branch