



# 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 pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and,
- authorization to recover 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*.

### Preliminary Matter: Name correction

The landlord testified that the tenant's application stated the wrong last name for the landlord. I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

### Preliminary Matter: Request for legal advice

During the hearing, the landlord testified that they pursuing a monetary claim against the tenant in provincial court. The landlord asked me whether that claim should proceed in provincial court or the Residential Tenancy Branch. I told all parties that I was unable to provide advice.

#### 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 pursuant to section 67?

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

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

#### Background and Evidence

The parties both testified that the tenant paid a \$625.00 security deposit. The tenant testified that she provided her forwarding address in writing and she vacated the rental unit on March 1, 2019. The tenant provided a copy of the document with her forwarding address which she testified that she had delivered to the landlords.

The landlord testified that the tenant orally agreed to a deduction of \$256.13 for cleaning costs. The tenant produced a document evidencing an electronic transfer of \$359.87 from the landlords on March 17, 2019. The tenant testified that she did not agree to any deductions from the security deposit.

The tenant requested a rent reduction because the refrigerator was not working for a portion of the tenancy. The tenant testified that she complained that the refrigerator was not working on November 29, 2018 and the landlord sent an appliance repairman on December 28, 2018. The tenant testified that a replacement refrigerator was delivered on January 8, 2019 but the delivery personnel damaged the refrigerator during delivery so another refrigerator was ordered which was delivered on January 14, 2019.

The landlord testified that only the freezer portion of the appliance was not working. The landlord testified that the refrigeration portion of the appliance was functioning at all times. The landlord testified that the tenant broke the appliance by overfilling it. The landlord presented an email from the appliance repair person which stated that the

appliance may have been broken by over filling it. The landlord testified that they provided freezer access to the tenant in their own freezer while it was not working.

The tenant also disputed a rent increase. Both parties testified that new tenancy agreement was signed in November 2018 which increased the rent by \$50.00. The tenant testified that the rent increase did not comply with *Act*.

### Analysis

Section 38 of the *Act* states that:

- 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.

Based on the testimony of the parties, I find that the tenancy ended on March 1, 2019 when the tenant moved out of the rental unit.

On the basis of the undisputed testimony of the tenant, I find that the tenant provided the landlord with their forwarding address in person on March 1, 2019.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the tenant vacated the rental unit on March 1, 2019, the landlord's deadline to repay the deposit or file an application for dispute resolution was March 15, 2019.

I find that the landlord did not perform either of these requirements by the March 15, 2019. Further, even if the landlords had provided the partial return of the deposit in the time, they would still have been in violation of section 38 of the *Act* because the

landlords only provided a partial return of the deposit. I find that the parties did not have a written agreement authorizing the landlord's to retain a portion of the security deposit as required by section 38 to retain a portion of the deposit. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the security deposit. I find that the landlords are entitled to a credit of \$359.87 for the partial return of the security deposit.

I find that the tenant has not provided sufficient evidence to establish a claim for reduction of rent and monetary compensation relating to the refrigerator. I find that landlord adequately provided an alternative amenity by letting the tenant use their appliance while the appliance was being serviced and replaced. Accordingly, I dismiss this claim.

Based on the agreed testimony of both parties, I find that the tenant agreed to the rent increase in writing when the new tenancy agreement was signed. Section 43(1)(c) authorizes rent increase made by written agreement. Accordingly, I dismiss the tenant's claim disputing the rent increase.

In addition, since the tenant has been partially successful this matter, I award the tenant one-half of the filing fee, being \$50.00 for recovery of the filing fee pursuant to section 72.

According, I grant the tenant a monetary order of **\$940.13**, as calculated below.

<u>Item</u>	<u>Amount</u>
Award of double security deposit (\$625.00 x two)	\$1,250.00
Less: partial return of security deposit	-\$359.87
Award of one-half of filing fee	\$50.00
<b>Total</b>	<b>\$940.13</b>

### Conclusion

I grant the tenant a monetary order in the amount of **\$940.13**. If the landlords fail to comply with this order, the tenant may file the order in the Provincial Court to be 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: December 17, 2019

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Residential Tenancy Branch