



# Dispute Resolution Services

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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:

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Both the tenant and the landlord attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

### Issue(s) to be Decided

Should the tenant's security deposit be returned to her?  
Have the conditions for a doubling of the security deposit been met?  
Can the tenant recover the filing fee from the landlord?

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to any of the documents they specifically presented to me during testimony. 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 each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the (unsigned) tenancy agreement was provided as evidence by the tenant. The landlord acknowledges he has a signed copy of the tenancy agreement which is identical to the one produced by the tenant. The tenancy began on April 30, 2019 for a fixed term, ending on August 10, 2019. Despite the commencement date set for April 30<sup>th</sup>, the parties agree they verbally agreed that the tenant could commence the tenancy 3 days before the original date. The landlord submits that this was done on the verbal commitment of the tenant to return the unit in 'move-in condition' at the end of the tenancy. Rent was set at \$6000.00 per month, payable on the first day of each month. A security deposit of \$3000.00 was collected by the landlord, \$2,000.00 of which was returned at the end of the tenancy.

A condition inspection report was not conducted at the commencement of the tenancy. The tenant testified the landlord never provided her with an invitation to conduct a condition inspection report with him and the landlord testified that the rental unit, a fully furnished house, was in immaculate condition. If there were any deficiencies, the tenant could let him know and they would be fixed.

The tenant testified she vacated the rental unit on August 10, 2019 pursuant to the end date noted on the fixed term tenancy. She verbally asked the landlord if he wanted to do a walk-through but the landlord didn't want to do it before the tenant's scheduled trip to Vancouver Island early that morning. She was not provided with a different date to conduct a condition inspection report with the landlord at the end of the tenancy. On August 11, the landlord sent her a text stating she left the premises in great shape. The tenant responded by asking for her security deposit back.

On August 12, the landlord responded, advising he did not have the funds to return her security deposit. On August 15<sup>th</sup>, the landlord gave the tenant a cheque for \$3,000.00 but told her not to cash it because there is no money in the account. On August 16<sup>th</sup>, the landlord tells the tenant that he will do his best to get the security deposit to her before the end of the month. On August 20<sup>th</sup>, the landlord deposits \$2,000.00 to the tenant's bank account by e-transfer with the following message:

*2/3 of [address] deposit will get balance to you ASAP thanks [landlord].*

On August 26<sup>th</sup>, the landlord texts the tenant asking for her forwarding address. The tenant provides it to him the same day. The landlord sends another text on September 4<sup>th</sup>, indicating he will not return the tenant's security deposit until his new tenants arrive. This request to delay payment of the remaining \$1,000.00 is refused by the tenant.

Copies of the text message exchanges were provided as evidence by the tenant.

The landlord provided the following testimony. He acknowledges receiving the tenant's forwarding address by text message on August 26<sup>th</sup>, but he understood that the tenant is required to provide him with the forwarding address 'in writing', meaning it must be on physical paper.

The landlord submits that he should be entitled to retain a portion of the tenant's security deposit because the rental unit was not left in 'move-in' condition at the end of the tenancy and because the tenant did not return one of the keys. The tenant was allowed to move in 3 days early for free because she verbally agreed that rent for the 3 days would only be waived if the condition of the unit was 'move-in' ready at the end of the tenancy. He had to hire cleaners before the next tenants moved in, therefore the tenant owes him for the 3 days for before the tenancy began.

At the beginning of the tenancy, there was no need to do a condition inspection report because the fully furnished rental unit was immaculate. At the end of the tenancy, although he acknowledges sending the text on August 11 saying the tenant '*left the premises in great shape!*' he now says that it was incorrect. At first, he was willing to return the full deposit but he realized after August 28<sup>th</sup> or 29<sup>th</sup> when his cleaners came to clean the unit that it required a lot more time than anticipated.

The reason he didn't fully return the tenant's security deposit at the end of the tenancy was because his financial accounts were compromised by a 'hack' of his bank accounts, leaving his bank accounts inaccessible.

### Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23(3) 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 at the commencement of the tenancy.

Section 35(2) of the *Act* states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for a condition inspection at the end of a tenancy. *Residential Tenancy Regulation 17* requires the landlord offer the tenant their second opportunity to schedule a condition inspection **in the approved form** if the tenant is not available for the first offered time. Section 36(2) of the *Act* states that the right of the landlord to claim against the security deposit **is extinguished** if the landlord does not comply with section 35(2)[2 opportunities for inspection].

I find that since the landlord didn't offer the tenant the opportunity for a condition inspection at the commencement of the tenancy, in contravention of section 23 or an opportunity for a condition inspection at the end of the tenancy in contravention of section 35, the landlord's right to claim against the security deposit was extinguished. Despite his argument that he felt he had the right to retain a portion of the tenant's security deposit because the unit was not in 'move-in' condition at the end of the tenancy pursuant to the verbal agreement, the landlord did not have such a right. Not only was the right to claim against the security deposit extinguished for failing to do a condition inspection report at the commencement or at the end of the tenancy, the landlord would have been required to file an application for dispute resolution to claim for this compensation. It would be up to the director's delegate to determine whether he should be able to be compensated for the 3 days of unpaid rent for the early move in or compensation for cleaning at the end.

Secondly, section 38(1) 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,**
  - c) the landlord must do one of the following:
  - d) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - e) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord argues that although he was supplied with the tenant's forwarding address by text message on August 26, 2019, he was not provided with the forwarding address in writing as required by section 38(1).

Section 71 of the *Act* states:

**71 Director's orders: delivery and service of documents**

- 1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.
- 2) In addition to the authority under subsection (1), the director may make any of the following orders:
  - a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
  - b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;
  - c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

A forwarding address is a document referred to in section 88. While service by text message is not permitted by section 88, pursuant to section 71(2)(c), the director has the authority to determine if the document has been sufficiently served for the purposes of the *Act*. To do so, I must look at how the parties communicated with one another throughout the duration of the tenancy. Based on the text messages provided in evidence, I am satisfied that the dominant form of communication between the parties was by text message. I find it especially compelling that the landlord asked the tenant for her forwarding address by text message and received it the same day, on August 26<sup>th</sup>. I find the forwarding address to be deemed served upon the landlord on August 26, 2019 in accordance with section 71.

Pursuant to section 38(6), if a landlord does not comply with subsection (1), and return the tenant's security deposit within 15 days of the date the tenancy ends or the date he receives the forwarding address, the landlord may not make a claim against the security deposit or any pet damage deposit, and **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable. As the tenancy ended on August 10, 2019 and he was given the forwarding address on August 26, 2019, the landlord had until September 10, 2019 to return the tenant's security deposit in full. The language of section 38(6)(b) is mandatory, I have no capacity to change it. The landlord did not comply with section 38(1) of the *Act* and must therefore pay the tenants double the security deposit.

Residential Tenancy Policy Guideline PG-17 [Security Deposit and Set-off] provides guidance on how to calculate a doubling of a security deposit.

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit: • Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ( $\$800 - \$275 = \$525$ ).

In this case, the parties agree the landlord returned \$2,000.00 of the original \$3,000.00 security deposit. As such, I double the amount paid as security deposit, ( $\$3,000.00 \times 2 = \$6,000.00$ ), then deduct the amount already returned to the tenant. The tenant is entitled to a monetary order for ( $\$6,000.00 - \$2,000.00 = \$4,000.00$ ). Pursuant to section 38(6), I award the tenant \$4,000.00.

As the tenant's application was successful, the tenant is also entitled to recovery of 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 \$4,100.00.

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: January 16, 2020

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Residential Tenancy Branch