



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FDG Property Management Ltd and Key Property Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction

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

- An order for the landlord to return the security deposit pursuant to section 38;
- 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*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The tenant attended.

LC, agent, attended for the second named landlord ("the second named landlord"). LC acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant served the second named landlord as required by the *Act*.

The first named landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional thirty-five minutes to allow the first named landlord the opportunity to call. The teleconference system indicated only the tenant, the second named landlord, and I had called into the hearing.

I confirmed the correct call-in number and participant code for both landlords had been provided.

Both parties attending the hearing provided affirmed testimony. The hearing process was explained, and both parties had to opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party

Preliminary Issue – Service

The tenant provided affirmed testimony that the first named landlord was served by mailing the Notice of Hearing and Application for Dispute Resolution to the first named landlord at the address at which the first named landlord conducted business, an office with a sign and staff, which was known to the tenant. He testified that the documents were sent by registered mail on December 9, 2020 to both named landlords. The tenant provided the banking transaction number for payment of both mailings and testified that the total cost for both was \$37.44. The tenant was unable to find the tracking number.

Section 89 of the Act provides as follows:

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
 - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

[emphasis added]

I accept the tenant's credible testimony that the landlords were each sent an envelope containing the documents on the same day, December 9, 2010, thereby effecting

service on the first named landlord under section 90 five days later, that is, on December 14, 2019. I reached this conclusion based on the veracity of the tenant's testimony and the attendance by one of the landlords who acknowledged service by this means. I accept the tenant's explanation that he is unable to locate the tracking number and that he had in his possession an invoice from point of sale including the transaction number and amount.

Considering these factors, I therefore find that the tenant served the first named landlord on December 14, 2019 pursuant to sections 89 and 90.

Preliminary Issue – 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.

Preliminary Issue – Claim Against the Second Named Landlord

During the hearing, the tenant withdrew the claim against the second named landlord who was no longer an agent for the first named landlord. The agent LC withdrew from the hearing.

Accordingly, the claim against the second named landlord is dismissed without leave to reapply.

The remaining landlord is henceforth referred to as "the landlord".

Issue(s) to be Decided

Is the tenant entitled to a monetary award for compensation under section 67?
Is the tenant entitled to a doubling of the security deposit under section 38?
Is the tenant entitled to reimbursement of the filing fee under section 72?

Background and Evidence

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The parties entered into a tenancy agreement beginning May 1, 2019 and ending November 15, 2019. Rent was \$1,600.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$800.00 to the landlord which the landlord holds. The tenant did not provide any authorization to the landlord to retain any of the security deposit.

The tenant submitted a copy of the tenancy agreement. The tenant testified that the tenant provided the landlord with a forwarding address for the return of the security deposit on November 8, 2019 sent by email to the email address routinely used by the landlord in communication with the tenant and by posting the address in the RTB form on that day to the landlord's business office entrance. The tenant submitted a photograph of the tenant with the document posted to the landlord's business entrance on that day.

The tenant testified that on October 12, 2019, he sent an email to the landlord for permission to move out mid-month, that is, on November 15, 2020. He testified that the landlord replied as follows, "Everything is good for move out for the middle of November". The tenant submitted a copy of correspondence with the landlord in support of his testimony.

Because the landlord authorized the move-out mid-month, the tenant testified he rented premises elsewhere commencing November 15, 2020, requested that the landlord meet for a condition inspection that day, November 15, and then the tenant vacated the unit as planned.

Despite the landlord's authorization that the tenant could vacate the unit mid-month and pay one-half the rent for November 2019, the landlord nevertheless withdrew the entire month's rent from the tenant's bank account at the beginning of November 2019 for \$1,600.00. The landlord failed to return the overpayment to the tenant.

The landlord failed to cancel the authorization for monthly withdrawals from the tenant's bank account and the tenant incurred a banking expense of \$20.00 to cancel the authorization. The tenant testified the landlord subsequently attempted to withdraw rent for December 2019. Accordingly, the tenant claims compensation from the landlord for rental overpayment and fee of $\$800.00 + \$20.00 = \$820.00$.

The tenant testified that the landlord has not filed an application to retain the security deposit.

The tenant requested return of double the security deposit for the landlord's failure to return the security deposit within 15 days of the provision of the forwarding address.

The tenant requested reimbursement of the filing fee of \$100.00.

The tenant clarified his claim as follows:

ITEM	AMOUNT
Security deposit	\$800.00
Security deposit - doubled	\$800.00
Overpayment rent and banking fee	\$820.00
Reimbursement filing fee	\$100.00
TOTAL CLAIM	\$2,520.00

Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Security deposit

Section 38 of the *Act* requires the landlord 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 or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. 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 that at no time has the landlord brought an application for dispute resolution claiming against the security deposit for any damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act*. I accept the tenant's evidence that the tenants gave the landlord written notice of their forwarding address on November 8, 2019.

In addition, the tenant testified that the landlord did not respond to the tenant's request to attend at the unit on the last day of the tenancy to conduct a condition inspection. The tenant stated that no condition inspection report was prepared at the end of the tenancy as required under sections 23 and 35 of the *Act*. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the end of the tenancy.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a monetary order of **doubling of the security deposit**.

Overpayment of rent

I accept the tenant's credible testimony supported by documentary evidence that the tenant overpaid rent to the landlord and incurred a banking fee of \$20.00. I find the tenant has met the burden of proof on a balance of probabilities with respect to this aspect of his claim.

I therefore award the tenant \$820.00 for compensation under this heading.

Filing Fee

As the tenant is successful in the application, I award the tenant reimbursement of the filing fee under section 72.

Summary

In conclusion, I award the tenant a monetary award calculated as follows:

ITEM	AMOUNT
Security deposit	\$800.00
Security deposit - doubled	\$800.00
Overpayment rent and banking fee	\$820.00
Reimbursement filing fee	\$100.00
TOTAL MONETARY ORDER	\$2,520.00

Conclusion

- I grant the tenant a monetary order in the amount of **\$2,520.00** as described above.

- This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) 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: May 04, 2020

Residential Tenancy Branch