



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- The return of double the amount of their security and pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the Tenant’s documentary evidence. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

### Preliminary Matters

During the hearing the Landlord stated that their secretary had uploaded documentary evidence for my review, however, no documentary evidence was before me from the Landlord. The Tenant confirmed that they received 27 photographs, a copy of the condition inspections report(s) and a letter from the Landlord in relation to this matter.

As a result, I ordered the Landlord to provide the Residential Tenancy Branch (the “Branch”) with a copy of the documents listed above, by way of ServiceBC, submission to the Branch directly, or by uploading them through the online dispute resolution

system, no later than 4:30 P.M. on Tuesday May 19, 2020. I advised the parties that if I did not receive the documents by the deadline listed above, I would render the decision in their absence.

I provided the Landlord with the website address and their dispute access code, for the purpose of uploading their documents into the online dispute resolution system, and amended the status of the Application to allow for the submission of these documents.

The Landlord uploaded 18 photographs into the online dispute resolution system on May 15, 2020, in compliance with my order, which I have accepted for review in this matter. Although the Landlord also submitted copies of two text messages, these text messages were not discussed in the hearing as having been previously served on the Tenant as part of the Landlord's evidence. As there is no evidence before me that copies of these text messages were previously disclosed by the Landlord to the Tenant as part of their evidence package, these texts were not discussed during the hearing, and I did not authorize the late submission of these text messages by the Landlord, I have therefore excluded these two text messages from consideration in this matter.

#### Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of their security and pet damage deposits pursuant to section 38 (6) of the *Act*?

Is the Tenant entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

In the hearing the parties agreed that a move-in condition inspection and report were completed in compliance with the *Act* and the regulations at the start of the tenancy and that the Tenant was provided with a copy of the move-in condition inspection report as required. The parties also agreed that the tenancy ended on October 31, 2019, that the Landlord received the Tenant's forwarding address in writing on November 10, 2019, and that the Landlord has not returned any portion of the security and pet damage deposits paid by the Tenant.

Although the Tenant initially believed that they paid a security deposit in the amount of \$975.00, the Landlord disagreed, stating that it was only \$925.00. The parties agreed in the hearing that rent was \$1,850.00, and as a result, the Tenant agreed that they only

paid \$925.00 for a security deposit. There was no disagreement that the pet deposit was \$200.00.

The Tenant stated that they gave 30-days notice to end their tenancy on or about October 1, 2019, and that the Landlord never made any arrangements for a condition inspection. As a result, the Tenant stated that they moved out of the rental unit without completing a move-out condition inspection with the Landlord. The Landlord disagreed, stating that they think they received the Tenant's notice on October 3, 2019, and stated that they were friendly with the Tenant and therefore did not anticipate any issues with the move-out. The Landlord stated that they attempted to contact the Tenant on October 31, 2019, to complete the move-out condition inspection, but the Tenant had already moved-out and did not respond. As a result, the Landlord stated that the move-out condition inspection and report were conducted in the absence of the Tenant.

The Landlord stated that when they received the Tenant's forwarding address in writing on November 10, 2019, they prepared a copy of the condition inspection report, photographs of the condition of the rental unit at the end of the tenancy, and a letter outlining their concerns about the state of the rental unit and the return of the Tenant's deposits, and mailed them to the Tenant by registered mail on November 12, 2019. Tracking information for the registered mail tracking number provided by the Landlord in the hearing shows that the registered mail was received on November 18, 2019, and the Tenant confirmed receipt on that date in the hearing.

There is no dispute that the Landlord was not authorised to retain any portion of either the security deposit or the pet damage deposit by the Tenant or the Branch at the end of the tenancy. Although the Landlord stated that they thought they filed an application for dispute resolution in relation to the security deposit, they could not provide me with any details of that application, such as the file number or the date it was filed.

The Tenant stated that they are entitled to the return of double the amount of their deposits as the Landlord did not have authority under the *Act* to withhold any portion of their deposits and the deposits were not returned to them with 15 days after the date the Landlord received their forwarding address in writing.

The Landlord stated that the Tenant did not participate in the move-out condition inspection as required under the *Act* and that the rental unit was dirty and damaged. As a result, the Landlord argued that the Tenant was not entitled to the return of their deposits.

## Analysis

Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In the hearing the parties agreed to the following facts:

- A move-in condition inspection and report were completed, and that a copy of the report was provided to the Tenant at the start of the tenancy, or shortly thereafter, in compliance with the *Act* and regulations;
- The Tenant paid a security deposit in the amount of \$925.00, which the Landlord still holds;
- The Tenant paid a pet damage deposit in the amount of \$200.00, which the Landlord still holds;
- The tenancy ended on October 31, 2019;
- There was no agreement for the Landlord to retain any portion of the Tenant's security or pet damage deposits; and
- The Tenant's forwarding address was received by the Landlord in writing on November 10, 2019.

Although the Landlord stated that they had filed an application for dispute resolution in relation to the Tenant's security and pet damage deposits, they could not provide me with any details about that application for dispute resolution in the hearing, such as the date that it was filed or the file number. As a result, I am not satisfied that an application for dispute resolution has been filed by the Landlord in relation to the Tenant's security or pet damage deposits. There was also no evidence before me that the Landlord was authorised to retain any amount of the Tenant's security or pet damage deposits pursuant to sections 38 (3) or 38 (4) (a) of the *Act*.

The Tenant testified that the Landlord never made any arrangements for a condition inspection to be completed until after their tenancy had ended and they had already moved, and as a result, they did not complete a move-out condition inspection with the Landlord as required under section 35 (1) of the *Act*. The Landlord denied that they made no attempts to arrange for an inspection, stating that they contacted the Tenant on October 31, 2019, but the Tenant did not respond and appeared to have already moved out.

Section 35 (1) of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit, on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. It also states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 16 of the regulation states that the landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection, which must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time. Section 17 of the regulation states that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at a time offered, the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b). Paragraph (b) states that the landlord must propose a second opportunity, different from the opportunity described above, to the tenant by providing the tenant with a notice in the approved form, and that when providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Although section 35 (5) allows the landlord to complete the inspection and sign the report without the tenant, the landlord must first have provided the tenant with the two opportunities for inspection, including providing the tenant with the Notice of Final Opportunity to Schedule a Condition Inspection, in the approved form (RTB#22), as required by the *Act* and regulation, or the tenant must have abandoned the rental unit.

As the parties were in agreement that the Tenant gave notice to end the tenancy effective October 31, 2019, I find that the Tenant did not abandon the rental unit. While I appreciate the Landlord's position that they attempted to make arrangements for the move-out condition inspection on October 31, 2019, the parties were in agreement that this was the end date for the tenancy stated in the Tenant's notice to end tenancy, and I find that in waiting until this date to make attempts to schedule the inspection, the Landlord placed themselves in a position whereby they did not have sufficient time to comply with the required sections of the *Act* and regulation in terms of making two attempts to schedule the move-out condition inspection or serve the Notice of Final Opportunity to Schedule a Condition Inspection (RTB#22), when they were unable to reach an agreement with the Tenant about the date and time of the move-out condition inspection.

As a result, I am satisfied that it is the Landlord, and not the Tenant, who breached section 35 of the *Act* first, by failing to offer the Tenant at least 2 opportunities, as

prescribed under section 35 (2) of the *Act*, for the inspection, including serving the Notice of Final Opportunity to Schedule a Condition Inspection (RTB#22). Section 36 (2) (a) of the *Act* states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35 (2).

Based on the above, I find that the Landlord extinguished their right to claim against the Tenant's security and pet damage deposits pursuant to section 36 (2) (a) of the *Act* when they failed to comply with section 35 (2) of the *Act* as outlined above. As I have already found that there was no agreement for the Landlord to retain any portion of the deposits, and that there is no evidence that the Landlord was otherwise authorised to retain the deposits under the *Act*, I find that the Landlord was obligated to return the deposits to the Tenant, in full, by November 25, 2019, 15 days after they received the Tenant's forwarding address in writing on November 10, 2019.

Section 38 (6) (b) of the *Act* states that if the landlord does not return the deposits within the 15 days as required, they must pay the tenant double the amount of the security deposit, or the pet damage deposit, or both, as applicable. As the parties agreed that none of the \$1,125.00 in deposits paid by Tenant have been returned, I therefore find that the Tenant is entitled to compensation in the amount of \$2,250.00; double the amount of their security and pet damage deposits. No interest is payable under the regulation.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. Pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$2,350.00; \$2,250.00 for the return of double the amount of their deposits, plus \$100.00 for recovery of the filing fee.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$2,350.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 20, 2020

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Residential Tenancy Branch