# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for a monetary order for the return of double the remaining security and pet damage deposits that the Landlord deducted before returning a portion of these deposits to the Tenant.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing, as section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing and the Landlord said that he found out about the hearing from the RTB, not the Tenant.

The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on February 10, 2020. The Tenant provided a Canada Post tracking number as evidence of service. However, the Tenant said that she had to serve the Landlord with the documents at the rental unit property, because that is the address for service that the Landlord wrote on the tenancy agreement.

The Landlord said that the current tenants did not forward the Tenant's registered mail notice to the Landlord. I asked the Landlord if he would like an adjournment in order to better prepare for the hearing and he declined this opportunity. Further, the only evidence the Tenant submitted was a copy of one page of the lease, of which the

Landlord already had a copy.

Section 13(2)(e) of the Act requires a landlord to include his address for service and a telephone number of the landlord or the landlord's agent. I find that the Landlord is required to provide an address for service at the place where he works or resides normally, rather than using the rental unit address for this purpose. Accordingly, I find that the Landlord failed to comply with the Act by using the rental unit address as his address for service. I caution him to provide an appropriate address for service in tenancy agreements from now on.

When I consider everything before me in this regard, I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Parties in this matter.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2017 and ran until the Tenant moved out on August 30, 2019. The Parties agreed that the Tenant, in coordination with three other tenants, paid the Landlord a total monthly rent of $2,900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord $350.00, as her portions of a $1,400.00 security deposit for the residential property, and a $600.00 pet damage deposit.

The Parties agreed that the Tenant sent the Landlord a copy of her forwarding address on February 10, 2020 via registered mail and via text. The Tenant said that the Landlord responded to the text message, showing that he received her forwarding address. I find that the undisputed evidence before me is that the Landlord received the Tenant's forwarding address on February 10, 2020 via text.

The Parties agreed that there may have been a condition inspection of the residential property for the other tenants; however, the Tenant said that the Landlord did not conduct a condition inspection of her rental unit with her, nor did he give her a copy of a condition inspection report ("CIR").

In the hearing, the Tenant testified that there were four tenants in the rental unit and that the Landlord deducted $50.00 from each person's $350.00 share of the security deposit. The Tenant said that the Landlord also deducted $250.00 from the pet damage deposit before returning only $350.00 of the $600.00 deposit. The Tenant argued that the Landlord owes her double the amounts deducted, because his deductions were not consistent with the requirements of the Act.

The Landlord said he made the deductions from the security deposit, because:

> I had the issue of [the Tenant] parking her vehicle where it's not supposed to be. See the site plan. It's free to park on the street, but she parked it where I can't get access to the garage. I asked her on two separate occasions not to park there. I realized in the summer of 2018, she parked her car there and just left it there, and she left for Australia for the whole summer, it was not insured. I told her you can't park an uninsured car on any site.
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> I had a text message from her saying uninsured cars are allowed to be parked on a driveway. But in the tenancy agreement there's no parking. On page two – no parking on the site - and seven spots around the house in the street. The Tenant said that uninsured cars are allowed to be parked in a driveway, and that there's nothing illegal about that.
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> I tried to be reasonable for things like this; I enjoyed the girls there, but there's always issues with rentals, especially with multiple people living there. I let the kids park there to get their stuff out of the car. But if it's left there and abandoned with no insurance, what if my insurance person drove by? What if there was a fire? She parked there too much for what the lease allows. I indicated in September 2017 that there's no parking on there.

The Tenant said:

> The first thing, the whole parking thing is irrelevant to the deposits. He can't deduct from something other than for damage caused by tenants and caused by a pet. And my second comment, like with the pets, I got my car during the middle

> of the tenancy, and it was parked there multiple times. We had a good relationship – I had to have a car for work. And if the Landlord had complied with section 28 of Act and given 24 hours' notice before coming to the property, I could easily have moved it. And the Landlord has never mentioned it to me as an issue, but he never gave us 24 hours' notice. He said in front of multiple people . . . he said he sometimes found himself driving there…. In summary, it's not the issue here, and if the Landlord had an issue, he should have filed for dispute resolution. He's now using this to justify taking money.

The Landlord said:

> The property is a duplex. When I first rented it out, it's the same with everybody - they have their privacy in their own suites. There are two separate units. We give 24-hour notices, if we go into the property, except in an emergency. There are multiple people on the property, but the garage is not part of the rental, as set out in the lease. I give them respect; I'm on site, but it's not inside the rental house.

In terms of deducting from the deposits without having obtained an order from the Director, the Landlord said:

> It is not an excuse, but I do look after a handful of other houses. I try to deal with this stuff here, but what we put on the lease agreement, I shouldn't be. . . they should not be parking there. It's black and white in the lease agreement.
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> In hindsight, I do try to keep these houses up as much as I can; it was just an oversight on my side.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenant provided her forwarding address to the Landlord on February 10, 2020, and that the tenancy ended on August 30, 2019. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

> **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.

The Landlord was required to return the full $350.00 security deposit and $600.00 pet damage deposit the Tenant paid him within fifteen days of February 10, 2020; the Landlord should have returned these deposits by February 25, 2020 or applied for dispute resolution to claim against the deposits, pursuant to section 38(1). The Landlord returned $300.00 of the Tenant's $350.00 security deposit, and he returned $350.00 of the Tenant's $600.00 pet damage deposit. However, the Landlord did not apply to the RTB for dispute resolution, claiming against the remaining amounts of the deposits that he retained. Therefore, I find the Landlord failed to comply with his obligations under section 38(1).

Section 38(6)(b) states that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the deposit withheld. There is no interest payable on the security deposit.

I, therefore, award the Tenant $100.00 from the Landlord in recovery of double the remaining security deposit, and $500.00 in recovery of double the remaining pet damage deposit for a total monetary award of **$600.00**, pursuant to section 67 of the Act.

Conclusion

The Tenant's claim against the Landlord for return of double the remaining security and pet damage deposits is successful in the amount of $600.00. The Landlord did not return the Tenant's full security or pet damage deposits or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenant's forwarding address, pursuant to section 38(1) of the Act.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in

the amount of **$600.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 13, 2020

Residential Tenancy Branch