



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT, MNSD, FFT**

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- A return of all or a portion of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 30 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant was assisted by an interpreter and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with the notice of application and evidence by registered mail sent on November 5, 2020. The tenant submitted a valid Canada Post tracking receipt and photograph of the package as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on November 10, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

### **Issue(s) to be Decided**

Is the tenant entitled to a monetary award as claimed?  
Is the tenant entitled to a return of the security deposit?  
Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

The documentary evidence for this tenancy, including the tenancy agreement and most correspondence between the parties was written in Korean. The tenant has provided documentary evidence along with their translation of the contents of the documents.

This periodic tenancy began in March 2020. The tenant paid a lump sum amount of \$7,900.00 for a period of 6-months until August 31, 2020 as well as a security deposit in the amount of \$900.00.

Due to the Covid19 pandemic the tenant gave notice to end the tenancy on April 6, 2020 and vacated the rental unit by the end of the month. The tenant now seeks a return of the balance of the prepaid rent for the period after the tenancy had ended. The tenant also seeks a return of the security deposit for this tenancy. The tenant testified that they provided their forwarding address in writing to the landlord on October 11, 2020 and have not authorized any deduction from the deposit. The tenant also submits that no condition inspection report was prepared at any time for this tenancy.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the present circumstance I accept the tenant's evidence that they gave notice to end the fixed-term tenancy on April 6, 2020. In accordance with section 45(1) of the *Act* the effective date of the notice was no earlier than the date one month after the date the landlord receives the notice and is the day before the date in the month when rent is payable under the tenancy agreement. I accept the tenant's submission that the rent is payable on the first of each month under the tenancy agreement. Accordingly, I find that the effective date of the notice of April 6, 2020 was May 31, 2020.

The tenant says that they paid a lump sum amount of \$7,900.00 representing the rent from March 1, 2020 to August 31, 2020. The copy of the tenancy agreement submitted

into evidence provides that the base rental rate is \$1,500.00 per month with discounts available for lump sum payments made for 6-months or 1-year. Based on the evidence I accept that the \$7,900.00 was the agreed upon rent for 6 months period which is approximately \$1,316.67 per month.

As I find that the effective date of the notice of April 6, 2020 is May 31, 2020 the tenant was obligated to pay full rent until that time. Therefore, there is an overpayment of monthly rent for the months of June, July and August, 2020. At the monthly rate of \$1,316.67 I calculate the overpayment to be \$3,950.01. I issue a monetary award in the tenant's favour for that amount accordingly.

The tenant says that they paid a security deposit of \$900.00 for this tenancy. Based on the written tenancy agreement the base rate for monthly rent is \$1,500.00. In accordance with section 19 of the *Act*, a landlord must not require or accept a security deposit that is more than  $\frac{1}{2}$  of the rent payable under the tenancy agreement and any payment made over that amount is considered an overpayment. Accordingly, of the \$900.00 paid I find that \$150.00 is an overpayment which the tenant is entitled to have returned pursuant to section 67 of the *Act*.

Section 38 of the *Act* requires the landlord to file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit.

I accept the tenant's undisputed evidence that they provided the landlord with a forwarding address in writing on October 11, 2020. I accept the evidence that the landlord has neither returned the security deposit in full nor filed an application for authorization to retain the amount.

Furthermore, I accept the evidence of the tenant that no condition inspection report was prepared at any time for this tenancy. In accordance with section 24 of the *Act* a landlord who fails to prepare a condition inspection report in accordance with the *Act* and regulations extinguishes their right to claim against a deposit.

Based on the undisputed evidence before me, I find that the landlord has extinguished their right to claim against the security deposit by failing to complete a condition inspection report in accordance with the *Act* and has failed to return the deposit in full within 15 days of receiving the tenant's forwarding address. I accept the tenant's

evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$1,500.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$3,708.00 on the following terms:

Item	Amount
Overpayment of Rent June July Aug 2020	\$3,950.01 (\$1,316.67 x 3 months)
Overpayment of Deposit	\$150.00
Double Security Deposit	\$1,500.00 (\$750.00 x 2)
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$5,700.01</b>

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: January 29, 2021

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Residential Tenancy Branch