



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cecile-Evergreen Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

MN represented the landlord in this hearing, while BF appeared for the tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing ("Application"). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application.

Preliminary Issue – Service of the Tenants' Evidence

Although the landlord's agent confirmed service of the tenants' application, the agent testified that they did not receive the tenants' evidence package.

Although the tenant testified that the landlord was served with their evidentiary materials, I am not satisfied that the landlord had received the package. As I find that there would be undue prejudice by admitting the tenants' evidence package, I exercise my discretion to exclude the tenants' evidentiary materials for this hearing.

The tenant agreed to proceed by way of sworn testimony for hearing. As the tenant confirmed receipt of the landlord's evidence package, I find the tenants duly served with the landlord's evidence. The hearing proceeded as scheduled.

Preliminary Issue—Amendment to Tenant's Application for Compensation or Money Owed

Although the tenant had applied for a monetary order in relation to their security deposit under section 38 of the *Act*, they referenced other monetary claims unrelated to this specific section such as compensation for a title search fee and compensation for their time.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

No amendments were received in accordance with RTB Rule 4.6 to add additional claims to the tenants' original application under section 38 of the *Act*. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I do not allow the tenants' additional monetary claim beyond what is allowed under section 38 of the *Act*, and I dismiss the tenants' application for additional monetary compensation or money owed for this tenancy with leave to reapply. The tenants remains at liberty to make a formal application for a monetary award for damage or losses arising out of this tenancy. Liberty to reapply is not an extension of any applicable limitation period.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to compensation under section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties confirmed that the following facts. This month-to-month tenancy began on November 25, 2016, and ended on June 30, 2020. Monthly rent was set at \$1,972.00, payable on the first of the month. Both parties confirmed that a move-out inspection was completed on July 7, 2020, and the tenants' forwarding address was provided that date. On July 17, 2020, the tenants were sent a cheque for the return of a portion of their deposit in the amount of \$310.00, which was cashed by the tenants.

The landlord's agent confirmed that they have not filed any applications in relation to the deposit, but withheld the remaining \$590.00 to cover losses associated with this tenancy. The tenant BF confirmed in the hearing that the tenants had only agreed for the landlord to retain \$300.00 for the carpet and duct cleaning, \$35.00 for the oven cleaning, and \$5.00 for a missing bulb for a total deduction of \$340.00. The tenants are requesting the return of the remaining portion of their deposit, plus compensation under section 38 of the *Act*, plus recover of the filing fee for this application.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In consideration of the tenants' entitlement, I find that the tenants had consented to the following deductions: \$300 for carpet and duct cleaning, \$35.00 for oven cleaning, and \$50.00 for a missing bulb. The total deduction agreed to by the tenants was \$340.00.

I have considered the testimony of both parties, and I find that it was undisputed that the tenants provided their forwarding address to the landlord on July 7, 2020. It was also undisputed that the landlord returned \$310.00 to the tenants on July 17, 2020, and did not file any applications to retain the remaining portion. The landlord is still in possession of \$250.00 of the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application and calculation of applicable monetary awards:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
- *if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- *any arbitrator's monetary order outstanding at the end of the tenancy;*
- *any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit(see example B below);*
- *if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.*

Example C in the Policy guideline illustrates how a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

As the tenants agreed to a deduction of \$340.00 from the original deposit of \$900.00, and as the landlord failed to file a claim against the remaining portion of the deposit within 15 days of the provision of the tenants' forwarding address, I find that the tenants are entitled to double the amount that remained after the deduction authorized by the tenants, less the amount returned to them ($\$900 - \$340.00 = \$560.00 \times 2 = \$1,120.00$ less the \$310.00 returned to the tenants) for a total monetary order of **\$810.00**.

I allow the tenants to recover the \$100.00 for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$910.00 for the return of their deposit and compensation under section 38 of the *Act*, plus recovery of the filing fee.

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of 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: February 9, 2021

Residential Tenancy Branch