



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC, MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on March 16, 2021 seeking a monetary order for the return of the security deposit they paid at the start of the past tenancy. They also seek other monetary compensation, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 17, 2021. In the conference call hearing I explained the process and offered the parties the opportunity to ask questions.

At the start of the hearing, each party confirmed their receipt of the evidence prepared by the other. On this basis, I proceeded with the hearing, with each party making oral submissions and presenting their evidence.

Issues to be Decided

- Is the tenant entitled to a return of the security deposit, pursuant to s. 38 of the *Act*?
- Is the tenant entitled to other monetary compensation associated with the tenancy, pursuant to s. 67 of the *Act*?
- Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement. It shows the tenancy started on December 3, 2020 on a monthly basis. The rent amount was \$1,900. The tenant paid a security deposit of \$950 and a pet damage deposit of \$250. This was the second agreement between the parties, with the original one-year agreement starting in December 2019, ending in December 2020.

In the hearing, the tenant specifically noted there was no initial move-in inspection at the start of the tenancy.

The tenancy ended in February 2021. This was a written notice provided by the landlord, dated December 28, 2020. The landlord provided: "I would like to explain the reason I have no choice to move in to my place on the date of Feb 28, 2021."

According to the tenant, this was the only written notice from the landlord. The start of the tenant's move out was on February 26th. They did not know or have the understanding that the 26th was the tenancy ending date.

The tenant in the hearing described the ensuing end of tenancy thus:

- they started to move out on February 26 – the movers came on this day and they moved "most things out" on this day
- they returned on the 27th with more cleaning supplies, with the intention being to further clean the unit, remove the rest of their belongings
- when they arrived on the 27th, there was an unknown person there, painting and working (this is shown in photos the tenant provided in their evidence)
- on this date a number of the landlord's personal items were in the rental unit
- the tenant's own hired carpet cleaner was supposed to come on the 27th – when informed by the tenant that another person was present in the unit, the carpet cleaner was not comfortable with this, and wanted to arrange cleaning for another day
- the landlord also informed the carpet cleaner that another day would be better – proof of this in the tenant's evidence is the landlord's direct response stating: "Let's cancel. Also I would like to inquire about pricing to I can personally reach out to book."

In their submission, the tenant provided that there was no move-out inspection at the end of the tenancy. This was for two reasons: the painting had already started; and the landlord stated they did not want an inspection completed with the tenant. The tenant stated they were aware they have to be involved in the process and that there must be a report, citing s. 35 and s. 36 of the *Act*. As proof of the landlord's rejection of the tenant's request, they provided a text message image from February 28th showing the landlord's response, translated to English "No thanks!!! I will take photos u have not cleaned. Forward it so you can see them."

Following this response, the tenant asked again, to which the landlord replied: "I hire the

cleaning lady to clean everything . . . that is supposed to be done. I am not interested in meeting you again. Thanks.”

The tenant also provided that the conversation with the landlord on this point was “a little bit threatening”. They paraphrased the landlord as saying: ‘I am not giving you anything unless you leave the key . . .’

Earlier in the tenancy, the tenant provided post-dated monthly rent cheques. The landlord did not return these at the end of the tenancy. The tentative plan was for these to be sent by mail. The tenant incurred a bank fee of \$12.50 to cancel these cheques when the landlord did not return them.

The tenant provided a Monetary Order Worksheet that sets out their claim:

1. security deposit return: \$950
2. pet damage deposit return: \$250
3. cheque cancellation fee: \$12.50
4. pro-rated rent compensation for 2 days’ forfeited at end of tenancy: \$136

This sum total is \$1,348.50. The landlord provided evidence showing \$800 of this security deposit amount on April 28, 2021. The evidence shows the deposit completed by the tenant on April 29, 2021. The tenant acknowledged the amount that was returned prior to their Application for this hearing.

The landlord stated their position in the hearing:

- the tenant informed the landlord of their move-out date being February 26th, so the tenant moved out on the 26th – there is no proof of the need for an extra 2 days, and the tenant was not clear on the completion date
- the landlord returned on the evening of the 26th and performed minor cleaning and placed a few of their own items in the unit
- the tenant’s excuse for not cleaning on the 27th was that the painter was not wearing a mask in line with public health guidelines
- the landlord subsequently arranged carpet cleaning – they could not see that carpet cleaning was done at all, with the carpet cleaning not completed on the 26th because of the painter
- with no carpet cleaning, the landlord deducted this cost before returning the deposit to the tenant (\$200) – additionally, they had to repair blinds (\$200)
- they had advised the tenant of the need for a painter, so they cannot understand why the presence of the painter would be an issue for the tenant

In the hearing, the landlord confirmed they did not apply to the Residential Tenancy Branch to retain a portion of the deposit for recompense of damages or other costs.

The tenant reiterated their position that they were unable to complete full cleaning due to other activity being initiated by the landlord in the rental unit. They provided their forwarding address to the landlord by text message on February 26th. Additionally, the tenant provided a copy of the form dated February 28, the 'Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit'. This form shows another means by which they advised the landlord of their forwarding address.

Analysis

The *Act* s. 38(1) provides that a landlord must either: repay a security and/or pet deposit; or apply for dispute resolution to make a claim against those deposits. This must occur within 15 days after the later of the end of tenancy or the tenant giving a forwarding address.

Following this, s. 38(4) provides that a landlord may retain a security deposit or pet deposit if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. This subsection specifies this written agreement must occur at the end of a tenancy.

Then, s. 38(6) sets out the consequences where the landlord does not comply with the requirements of s. 38(1). These are: the landlord may not make a claim against the deposit; and the landlord must pay double the amount of the deposit.

I find as fact that the tenant gave their forwarding address to the landlord as provided for in their evidence. They provided this to the landlord initially on February 26 via text message, then in the form for this specific purpose on February 28. There was no evidence presented in the hearing by the landlord to show otherwise.

In the hearing, the landlord confirmed they did not apply for dispute resolution to claim against the security deposit within 15 days of receiving this forwarding address. The landlord provided that they forwarded the remainder of the deposits -- \$800 -- and withheld \$400 in total for carpet cleaning and other incidental cleaning in the unit. There is no evidence of the tenant's written permission or an order from the Residential Tenancy Branch allowing for this.

I am satisfied the tenant's forwarding address was within the landlord's knowledge, as necessary, by February 28, 2021 at the end of the tenancy. By not returning the security deposit, and not applying for dispute resolution on a claim against that deposit, I find the

landlord's actions constitute a breach of s. 38 of the *Act*. The landlord must pay the tenant double the amount of the security deposit, as per s. 38(6) of the *Act*.

To be clear, the actual state of the rental unit, or the amount of cleaning involved is not at issue. Rather, my decision rests solely on an application of the portions of the *Act* governing dispensation or retention of the security deposit.

The landlord and tenant agree that \$800 from the total deposits amount was returned. I deduct this amount already returned to the tenant and grant the tenant \$1,600.

I find February 26 was the *start* of the tenant's move-out process. There was nothing preventing the tenant from starting this process prior to the end of the tenancy. There is no sufficient evidence to show the tenant indicated this was the final move-out date; indeed, the evidence shows the tenant asking for a move-out inspection with the landlord after this date. I find this is strong evidence to show the tenant did not indicate February 26th was the final date. I find the tenant's pro-rated calculation amount of \$136 reasonable given my finding that the tenant gave information to the landlord that they wished to have the inspection, only to be refused by the landlord.

The tenant presented, with adequate evidence, that they incurred a bank fee of \$12.50 for cancelled cheques. I also award this amount to the tenant.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the filing fee from the landlord.

Conclusion

I order the landlord to pay the tenant the amount of \$1,848.50 as set out above. I grant the tenant a monetary order for this amount. They must serve this order on the landlord. Should the landlord fail to comply with this monetary order, the tenant may file it in the Provincial Court (Small Claims), where it may 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 s. 9.1(1) of the *Act*.

Dated: August 27, 2021

Residential Tenancy Branch