# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDL, FFL, MNSD

Introduction

This hearing dealt with cross-applications filed by the parties. On June 28, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 14, 2021, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not appear at any point during the 24-minute teleconference. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

She advised that she received the Landlord's Notice of Hearing package in the summer of 2021. Based on this undisputed testimony, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing package. As the Landlord has not attended this hearing to make submissions with respect to his own Application, I have dismissed the Landlord's Application without leave to reapply.

As well, she advised that she served her Notice of Hearing package to the Landlord by hand at his hotel on or around July 26, 2021 with a witness, but she did not submit any proof of service. However, based on this solemnly affirmed testimony, I am satisfied that the Landlord was sufficiently served the Tenant's Notice of Hearing package.

The Tenant confirmed that she did not submit any documentary evidence for consideration on either of these files.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

## Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?

## Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on May 1, 2020 and that the tenancy ended on June 1, 2021 when she gave up vacant possession of the rental unit. Rent was established at $825.00 per month and was due on the first day of each month. A security deposit of $412.50 was also paid. A copy of a written tenancy agreement was not submitted as documentary evidence as she indicated that the Landlord did not create one despite being legally required to in accordance with the *Act*.

She stated that neither a move-in inspection nor a move-out inspection report was ever conducted by the Landlord. As well, she indicated that she provided her forwarding address in writing to the Landlord, but she is not sure when she did this. She stated that the Landlord has neither claimed against her deposit nor returned it to her.

## Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that neither a move-in inspection report nor a move-out inspection report were conducted, clearly the Landlord did not complete these reports in accordance with the *Act*. As such, even if the Landlord had applied to claim against the security deposit, I find that the Landlord had already extinguished this right.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. This Section requires the 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 in full 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 pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed testimony, I am satisfied that the tenancy ended on June 1, 2021. While the Tenant was unsure when she provided the Landlord with her forwarding address in writing, I find it important to note that the Landlord used the Tenant's new address in his own Application when he filed on June 28, 2021. As such, I am satisfied that this supports a conclusion that the Landlord had the Tenant's forwarding address in writing.

Given the Tenant's solemnly affirmed testimony that the Landlord has not returned her deposit, and as the Landlord has also not filed to claim against the deposit, I am satisfied that the Landlord has not complied with the *Act*. As such, I find that the doubling provisions apply to the security deposit in this instance. Consequently, I grant the Tenant a monetary award in the amount **$825.00**.

As the Landlord's Application was dismissed without leave to reapply, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

Based on my findings above, I provide the Tenant with a Monetary Order in the amount of **$825.00** 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: January 18, 2022

Residential Tenancy Branch