



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's 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.

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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Background and Evidence

This month-to-month tenancy began on August 15, 2019, and ended on March 27, 2021. Monthly rent was set at \$1,100.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$550.00. Both parties confirmed that the landlord had retained \$400.00 of the deposit, and the remainder has been returned

to the tenant. Both parties confirmed that the tenant had provided the landlord with their forwarding address on March 27, 2021.

The tenant's agent testified that a forwarding address was provided to the landlord in writing on October 11, 2016, but the tenant has not received any portion of the deposit back from the landlord. A copy of this letter was included in evidence.

The landlord did not dispute the fact that he kept the \$400.00 as they felt entitled to retain this portion to cover the cost of repairing damage that was caused by the tenant. The landlord confirmed in the hearing that they have not filed an application to retain this portion of the tenant's deposit.

The tenant filed this application as they did not give written authorization to allow the landlord to retain any portion of the security deposit.

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 tenants 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 this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit, less the amount that has been returned to the tenant.

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 A in the Policy guideline illustrates how a security deposit may be doubled when a portion has been returned to the tenant.

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the

As the landlord had previously returned \$150.00 to the tenant, I find that the tenant is entitled to double the deposit, less the amount returned to them (\$1,100.00 - \$150.00) for a total monetary order of **\$950.00**.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, plus a monetary award for landlord's failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,100.00
Less Security Deposit Previously Returned to Tenant	150.00
Total Monetary Order	\$950.00

The tenant is 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 07, 2022

Residential Tenancy Branch