



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORP.
LTD. and [tenant name suppressed to protect privacy]

Dispute Codes MNSDS-DR

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). This application was originally filed by the tenant as a Direct Request Proceeding pursuant to section 38.1 of the Act. The tenant applied for \$1,350.00 for the return of double their security deposit and the filing fee was waived. On February 3, 2022, an adjudicator adjourned this matter to this date, April 25, 2022 for a participatory hearing due to service issues.

On April 25, 2022, the tenant and an agent for the landlord, PB (agent) and a landlord observer SB (observer) attended the teleconference hearing. The tenant and the agent were affirmed and the hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their relevant documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

In addition, the name of the landlord was corrected to EREICL, and the building manager, BBR, was removed from the application pursuant to section 64(3)(c) of the Act.

Due to a previous decision being submitted in evidence (Previous Decision), the two file numbers of that Previous Decision have been included on the style of cause for ease of reference. The Previous Decision relates to a tenant application for over \$20,000.00 in compensation due to smoke and noise in the rental unit that was dismissed without

leave to reapply and does not relate to the return for double the amount of the tenant's security deposit, which is the issue before me.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on February 1, 2020. The parties agreed that the tenant vacated the rental unit on either June 29 or June 30 of 2021. The tenant paid a security deposit of \$675.00 at the start of the tenancy, which has accrued no interest to date.

During the hearing, the parties agreed that on July 5, 2021, the tenant wrote an email to the landlord with their written forwarding address. The landlord confirmed that they have not filed a claim towards retaining any portion of the tenant's security deposit.

The landlord submitted a letter to the tenant dated July 12, 2021 (Landlord Letter), indicating the following in part:

Please find enclosed our cheque number 16055 refunding the security deposit paid on the aforementioned suite. The amount you are receiving is calculated as follows:

Security Deposit Paid	\$675.00
Interest	<u>0.00</u>
	675.00
Less: Laundry Owing (Feb 2020 to Feb 2021)	(190.00)
Move-out Cleaning	(202.13)
Removal of Garbage and cleaning	<u>(140.00)</u>
(Statement enclosed)	<u>(532.13)</u>
Amount Due to Tenant	<u>\$142.87</u>

The tenant testified that they received a cheque from the landlord for \$142.87 in July 2021 but did not cash that cheque due to the tenant not agreeing to the deductions listed above.

The landlord presented an email from the tenant dated July 5, 2021 at 12:30 p.m. which reads in part:

Subject:

I realize that I owe 190\$ from the damage deposit

For Laundry charges \$190

Sent from my iPhone

The tenant confirmed that they did send the July 5, 2021 email to the landlord agent, which confirmed the landlord could keep \$190.00 from deposit.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and**
- (b) the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**
- (6) If a landlord does not comply with subsection (1), the landlord**
- (a) may not make a claim against the security deposit or any pet damage deposit, and**
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**
- [emphasis added]

Given the above, I find the landlord only had the right under the Act to retain the \$190.00 amount from the tenant's \$675.00 security deposit based on the email dated July 5, 2021 from the tenant that I find confirmed that the tenant surrendered \$190.00 of their security deposit for laundry charges. I find the balance owing to the tenant by the landlord would have been \$485.00 which should have been post-marked to the tenant within 15 days of July 5, 2021, which is the date the tenant provided their written forwarding address to the landlord. Under section 38 of the Act, the landlord has 15 days to return the tenant's security deposit from the later of the end of tenancy or the written forwarding address.

In this matter, as the tenancy would have ended on June 29 or June 30, 2021 when the tenant vacated the rental unit, I find the tenant had 15 days from July 5, 2021, the written forwarding address date. Therefore, I find the landlord had until July 20, 2021 to return the tenant's security deposit balance of \$485.00 or file a claim against the security deposit. I find the landlord failed to do either. Furthermore, I find the cheque from the landlord of \$142.87 is now staled-dated as it is beyond 6 months after the cheque was issued in July 2021 and cannot be cashed as a result. Consequently, I find

the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their \$485.00 security deposit balance owing for a total of **\$970.00**. I note that the tenant's security deposit has accrued \$0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof based on the above and has been partially successful.

As the filing fee was waived, it is not granted.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of \$970.00, comprised of double the \$485.00 security deposit balance. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$970.00**.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is partially successful.

The tenant has established a total monetary claim of \$970.00 as indicated above. The tenant is granted a monetary order of \$970.00.

The landlord has been cautioned to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. If the tenant requires enforcement of the monetary order, the tenant must first serve the landlord with the monetary order along with a demand for payment letter. The tenant may then file the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that court.

The landlord is cautioned that they can be held liable for all costs related to the enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 25, 2022

Residential Tenancy Branch