



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

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

1. An Order for the return of the Applicant's security deposit that the Landlord is holding without cause pursuant to Section 38 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, LS, Translator, YC, Witness, SL, and the Applicant, CT, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Applicant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package and her evidence for this hearing by using a permitted email address for service purposes on December 8, 2021 (the "NoDRP package"). The Landlord confirmed receipt of the email from the Applicant. I find that the Landlord was deemed served with the NoDRP package on December 11, 2021, in accordance with Sections 43(2) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

The Landlord served the Applicant with her evidence via Canada Post registered mail on March 30, 2022. The Landlord provided the Canada Post registered mail tracking

number in her evidence. I noted the registered mail tracking number on the cover sheet of this decision. The Applicant confirmed receipt of the registered mail package, although no signature was required as Canada Post left it in her mailbox. I find that the Landlord's evidence was deemed served on the Applicant on April 4, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Applicant entitled to an Order for the return of the Applicant's security deposit that the Landlord is holding without cause?
2. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 3, 2019. The fixed term and tenancy ended on October 2, 2021. Monthly rent was \$10,500.00 payable on the first day of each month. A security deposit of \$5,250.00 was collected at the start of the tenancy and is still held by the Landlord.

The Applicant testified that the move-in condition inspection was a superficial look at the rental unit with the Landlord. The Landlord did not provide a move-in condition inspection report for the Applicant to sign, and no report was forwarded to the Applicant after the walk through inspection.

The Applicant also testified that an informal move-out condition inspection was completed with the Landlord's witness. The Applicant stated that the witness made no notes during the inspection, rather she just took a few photographs. The witness did not provide a move-out condition inspection report for the Applicant to sign, and no final report was forwarded to the Applicant after the final walk through.

The Applicant provided her forwarding address to the Landlord by email on October 6, 2021. The Applicant noted that she made a typo in the Re line of the letter citing the address of the rental unit incorrectly. The Applicant also uploaded a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit

#RTB-41 form. The Applicant stated the Landlord acknowledged receipt of the email saying, *"she'd transfer the deposit, but it's been seven months and I still have not received the deposit back."*

The Landlord testified that she provided three times for the Applicant to do the move-out condition inspection of the rental unit. The Landlord noted that one move-out condition inspection happened on October 2, then again on October 3, 2021. The Landlord's uploaded evidence includes an email where she requests another condition inspection *'within 3 days from Oct 7 and return all the keys & garage remote control after the move out inspection is completed. Otherwise, we will have to hold your deposit.'* The Landlord stated that the Applicant did not co-operate. The Landlord stated that garbage and trash was left in the garden, and the gardening was not done well. The Landlord testified that keys were left for two of the units, but for the third unit, the keys were not returned.

The Applicant replied that the keys for the third unit were returned on October 15, 2021 and she said she received an email from the Landlord saying that, *'I finally got my garage remote today.'* The Applicant testified that she did not give the Landlord permission to keep any of her security deposit. The Applicant replied that half the receipts she received from the Landlord are in Chinese and she does not know what they say. The Applicant asserted that the Landlord did not make a dispute resolution claim to keep any of the security deposit. The Applicant requests double the security deposit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlord did not complete a move-in condition inspection report of the rental unit prior to the Applicant moving into the suite pursuant to Section 23 of the Act, although the Landlord did an informal walk through with the Applicant. The Landlord did not provide a copy of the move-in condition inspection report to the Applicant in accordance with Section 18(1)(a) of the Regulation.

On October 2 and 3, 2021, an agent for the Landlord did another informal move-out condition inspection with the Applicant at the end of his tenancy; however, the Applicant was never presented with a completed move-out condition inspection report and she

was never asked to sign the report. The Landlord's witness did not give the Applicant a copy of the signed move-out condition inspection report as required by Section 18(1)(b) of the Regulation.

The Applicant provided her forwarding address to the Landlord on October 6, 2021. The Applicant was told that the Landlord would transfer the security deposit but this did not occur. The Landlord had until October 21, 2021 to return the security deposit to the Applicant or apply for dispute resolution to claim against the security deposit pursuant to Section 38(1)(d) of the Act. The Landlord did neither of these steps.

Section 24(2)(c) of the Act specifies that the Landlord's claim against a security deposit for damage to residential property is extinguished if the Landlord *having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations*. I find the Landlord's claim against the security deposit for damage to the rental unit is extinguished as the Landlord did not provide the Applicant with a copy of a signed move-in condition inspection report.

Section 38 of the Act requires a landlord to either return a tenant's security or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy, and the date the landlord receives the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to Section 38(6)(b) of the Act, equivalent to double the value of the security and/or pet damage deposit. The Applicant did not provide authorization for the Landlord to retain an amount from the security deposit to pay a liability or obligation owed. There has been no Arbitrator Order allowing the Landlord to retain an amount from the security deposit.

I find the tenancy ended on October 2, 2021 when a move-out condition inspection was done, albeit incompletely. The Applicant provided her forwarding address in writing on October 6, 2021. The Landlord did not apply to claim against the Applicant's security deposit. I find the Landlord's right to claim against the deposit was extinguished pursuant to Section 24(2)(c) of the Act and she must therefore pay the Applicant twice the amount held in trust.

The Applicant is entitled to a Monetary Award representing repayment of her security deposit doubled pursuant to Section 38(6)(b) of the Act. As the Applicant is successful

in her application, she is entitled to recovery of her application filing fee pursuant to Section 72 of the Act. The Monetary Award is calculated as follows:

Monetary Award

Security Deposit X 2 (\$5,250.00 X 2 =):	\$10,500.00
Plus return of application filing fee:	\$100.00
TOTAL Monetary Award:	\$10,600.00

Conclusion

I grant a Monetary Order to the Applicant in the amount of \$10,600.00. 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 of British Columbia 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 Act.

Dated: May 30, 2022

Residential Tenancy Branch