



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On November 21, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend at any point during the 25-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. As well, she provided a solemn affirmation.

She advised that she served the Notice of Hearing and evidence package to the Landlord by registered mail on November 25, 2021 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was delivered on December 13, 2021, and she testified that according to the tracking history, the Landlord signed to receive this package. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Landlord was duly served with the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

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 and pet damage deposit?
- Is the Tenant entitled to a Monetary Order for compensation?

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 she rented a self-contained rental unit, that this tenancy started as an unwritten, month-to-month tenancy on July 1, 2021, and that the tenancy ended when she gave up vacant possession on August 31, 2021. Rent was established at \$1,450.00 per month and was due on the first day of each month. A security deposit of \$725.00 and a pet damage deposit of \$725.00 were also paid. A copy of a tenancy agreement was not provided as documentary evidence as the Landlord neglected to complete one pursuant to Section 13 of the *Act*.

She submitted that she gave her forwarding address to the Landlord by text message on September 21, 2021, and she stated that they exclusively communicated via text message. She testified that her phone indicated that this message was read by the Landlord. She referenced their text message history, submitted as documentary evidence, supporting the position that they would only communicate via text message.

As the Landlord neither returned her deposits in full, nor made a claim against them in accordance with Section 38 of the *Act*, she is seeking a return of double the security and pet damage deposits.

In addition, she stated that she is seeking compensation for aggravated damages in the amount of **\$1,450.00** for “wrongdoing and financial and emotional distress.” When she was asked to elaborate on this, she cited a number of contraventions of the *Act* that the Landlord engaged in, such as: not completing a written tenancy agreement, not completing a move-in or move-out inspection report, and not providing the proper written notice to enter the rental unit. She also noted that the Landlord was being

unreasonable regarding the repair of some sort of leak issue, and that he put the onus on her to deal with it even though it was not her fault.

She then stated that the basis for this claim primarily was due to the Landlord not returning her deposits and the financial difficulty this placed her in. As well, she acknowledged that she suffers from “mental health issues” and that the ensuing financial burden made it more difficult to live, which added to her anxiety. She did not submit any documentary evidence to support any of these submissions.

Analysis

Upon consideration of the evidence 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 38(1) of the *Act* 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

When reviewing the undisputed evidence before me, I am satisfied that the Tenant provided her forwarding address to the Landlord on September 21, 2021 via text message, and that this was the method of communication in which they regularly communicated.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposits in full **or** make an Application to claim against them. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposits without the Tenant’s written consent.

While the Landlord received the Tenant’s forwarding address on September 21, 2021, according to the Tenant’s solemnly affirmed testimony, the Landlord neither returned

the security deposit and pet damage deposit, nor made an Application through the Residential Tenancy Branch to keep them.

Based on the totality of the evidence before me, as the Tenant did not provide written authorization for the Landlord to keep any amount of the security deposit or pet damage deposit, and as the Landlord did not comply with the requirements of Section 38, I find that he illegally withheld the deposits contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, and based solely on the Tenant's request, I am satisfied that the Tenant has substantiated a monetary award amounting to double the amount of the security deposit and pet damage deposit that was paid. Under these provisions, I grant the Tenant a monetary award in the amount of **\$2,900.00**.

With respect to the Tenant's claim for aggravated damages, 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*.

Furthermore, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

In addition, this policy guideline defines aggravated damages as an "intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When assessing the Tenant's submissions regarding a request for aggravated damages, I accept that the Landlord did not comply with the *Act* on multiple occasions by not completing a written tenancy agreement and a move-in or move-out inspection report. As well, I accept her submissions that the Landlord may have entered the rental unit without providing the proper written notice. However, there is no indication that the Tenant ever mitigated these breaches by bringing these to the Landlord's attention and then demanding, in writing, that he correct them.

Moreover, I find it important to note that she stated that the basis for this claim primarily was due to the Landlord not returning her deposits and the financial difficulty this placed her in. The Landlord's failure to deal with the deposits in accordance with the *Act* has already been dealt with above. While I acknowledge that not having these deposits dealt with in a timely manner can be burdensome, there are already provisions in the *Act* to remedy this issue.

When reviewing the testimony and evidence before me, I do not find that the Tenant has submitted sufficient or compelling documentary evidence to support her submissions to corroborate a loss that would justify an award for aggravated damages. Given that she stated that the only reason this was included in her Application was due to a suggestion by outside legal counsel, I find that this supports a conclusion that there is no basis for this claim. As such, I dismiss this claim in its entirety.

Pursuant to Section 38 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the security deposit	\$1,450.00
Doubling of the pet damage deposit	\$1,450.00
TOTAL MONETARY AWARD	\$2,900.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,900.00** 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: June 21, 2022

Residential Tenancy Branch