



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On February 1, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Tenant’s application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The adjudicator adjourned the direct request for the following reasons:

I have reviewed all documentary evidence and I find that the landlord named on the tenancy agreement does not match the landlord named as a respondent on the Application for Dispute Resolution.

The tenant submitted a note indicating that the respondent is the agent of the landlord named in the tenancy agreement. However, I find there is no evidence to demonstrate that the respondent is liable for the repayment of the deposit.

I find this discrepancy in the landlord's name raises a question that can only be addressed in a participatory hearing.

This hearing dealt with the Tenant’s application under the Act for:

- return of double the security deposit pursuant to section 38.1; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed she served the Landlord with the notice of dispute resolution proceeding package and the Tenant's documentary evidence (collectively, the "NDRP Package") by registered mail on February 1, 2022. The Tenant submitted a Canada Post registered mail receipt with a tracking number in support. Tracking records for the NDRP Package show that it was delivered on February 7, 2022. The Landlord acknowledged receipt of the NDRP Package. Based on the foregoing, I find the Landlord was served with the NDRP Package on February 7, 2022 in accordance with sections 88(c) and 89(1)(c) of the Act.

The Landlord relied on oral testimony for this hearing.

Preliminary Matter – Naming of Landlord

The Tenant's application indicates that the landlord named on the tenancy agreement, JZ, resides abroad and that the Tenant's point of contact throughout the tenancy had been the Landlord, not JZ.

During the hearing, the Landlord testified that he has full power of attorney to manage the rental unit on behalf of the owner, JZ. The Landlord testified that JZ is a family friend. The Landlord agreed that it was his decision regarding the treatment of the Tenant's security deposit and that he will be liable to the Tenant for any loss.

Section 1 of the Act defines a "landlord", in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

In this case, I find the Landlord qualifies as a “landlord” under paragraph (a)(i) and (ii) of the definition stated in the Act. I find the Landlord to be, at all material times, an agent of the owner JZ who, on behalf of JZ, permitted occupation of the rental unit under the parties’ tenancy agreement. I further find that as an agent of JZ, the Landlord has exercised powers and performed duties under the Act and the tenancy agreement. Based on the Landlord’s testimony during the hearing, I find the Landlord consents to being named as such for the purpose of this application. Therefore, I conclude that this application may proceed under the current style of cause unamended. I am satisfied that this resolves the concern of the Adjudicator as stated in the interim decision dated February 1, 2022.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to recover the filing fee from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 1, 2017 and ended on January 31, 2020. Rent was \$8,300.00 per month. The Tenant paid a security deposit of \$4,150.00.

The Tenant testified that she had to leave the rental unit due to a flood. The Tenant testified that on December 7, 2019, she gave the Landlord notice to terminate the tenancy on January 31, 2020. The Tenant stated that the Landlord did not return her calls, so she did not know whom to contact for a move-out inspection. The Tenant testified that she had the rental unit cleaned professionally before she locked up the house and left.

The Tenant submitted a copy of an email that she had sent to the Landlord dated January 31, 2020 (the “Tenant’s Email”), which includes a request for the return of the security deposit and the Tenant’s forwarding address. The Tenant also submitted a

completed Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit in form #RTB-47, which is attached to the Tenant's email.

The Tenant submitted a copy of an email to the Landlord dated April 16, 2020, again providing her forwarding address and requesting the return of her security deposit.

In response, the Landlord testified that the rental unit had been a brand-new home. The Landlord testified that aside from the flood damage, the rental unit was otherwise in good condition when the Tenant left. The Landlord testified that he has reports from plumbing and home inspection companies indicating that the flood damage was caused by misuse of the toilet. The Landlord testified that the flood incident resulted in significant restoration costs and months of lost rental income. The Landlord also argued that the parties had a fixed term tenancy and the Tenant had breached the lease. The Landlord testified that they did not try to claim these losses against the Tenant. The Landlord indicated that it was "common sense" for the Tenant's security deposit to be forfeited to the Landlord in this situation. The Landlord indicated that he did not reply to the Tenant because he felt uncomfortable due to the conflict between the parties. The Landlord indicated that he decided to forget about everything and start a new lease with new tenants.

The Tenant denied responsibility for the flood and argued that the parties had agreed on a month-to-month tenancy. The Tenant argued that the Landlord still has the obligation to return the security deposit.

Analysis

1. Is the Tenant entitled to return of double the security deposit?

Sections 38(1) and 38.1 of the Act state as follows:

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.

[...]

Order for return of security and pet damage deposit

38.1 (1) A tenant, by making an application under Part 5 [*Resolving Disputes*] for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:

- (a) the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;
- (b) there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;
- (c) there is no agreement under section 38 (4) (a) applicable to that portion.

(2) In the circumstances described in subsection (1), the director, without any further dispute resolution process, may grant an order for the return of the amount referred to in subsection (1) and interest on that amount in accordance with section 38 (1) (c).

In this case, I accept the Tenant's evidence that she requested the Landlord to return the security deposit and that she had sent her forwarding address to the Landlord via email on January 31, 2020. Pursuant to section 71(2)(b) of the Act, I find the Landlord to be sufficiently served with the Tenant's forwarding address in writing on January 31, 2020.

Based on the evidence presented, I find the Landlord neither repaid the security deposit to the Tenant nor applied for dispute resolution within 15 days of receiving the Tenant's forwarding address, that is, by February 15, 2020f.

In addition, I find the Landlord does not have any order of the Residential Tenancy Branch authorizing the Landlord to retain the security deposit under sections 38(3) or 38(4)(b) of the Act. I further find that the parties do not have a written agreement for the

Landlord to retain any or all of the Tenant's security deposit under section 38(4)(a) of the Act.

I find the Landlord believed he had other claims against the Tenant which meant that the security deposit was automatically forfeited to him. However, as noted above, section 38.1 of the Act requires a landlord to make an application for dispute resolution, obtain the tenant's written consent, or obtain an order from the Residential Tenancy Branch in order to keep the security deposit.

Based on the foregoing, I conclude that the Tenant is entitled to the return of double the security deposit from the Landlord pursuant to section 38.1 of the Act. I make no findings on the merits of any claims that the Landlord may have against the Tenant.

Section 4 of the Residential Tenancy Regulation (the "Regulations") states:

Interest payable on security deposits and pet damage deposits

4 The rate of interest under section 38 (1) (c) of the Act [*return of deposits*] that is payable to a tenant on a security deposit or pet damage deposit is 4.5% below the prime lending rate of the principal banker to the Province on the first day of each calendar year, compounded annually.

The prime lending rate of the principal banker to the Province on the first day of each calendar year since 2009 has been less than 4.5%, so the interest payable on security deposits under section 4 of the Regulations since 2009 has been 0%. As such, I find the Tenant is not entitled to any interest on her security deposit.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has been successful in this application. I grant the Tenant's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant on this application is calculated as follows:

Item	Amount
Double the Security Deposit (\$4,150.00 × 2)	\$8,300.00
Filing Fee	\$100.00
Total Monetary Order for Tenant	\$8,400.00

Conclusion

Pursuant to sections 38.1 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$8,400.00**. 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 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: September 27, 2022

Residential Tenancy Branch