



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD, MNDCT**

Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Sections 62 and 67 of the Act;
2. An Order for the Landlord to return part or all of the Tenant's security deposit back pursuant to Section 38 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. One Landlord, her Witness, CC, and the Tenant 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 Tenant testified that she served the Landlords with the Notice of Dispute Resolution Proceeding package for this hearing on April 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail tracking number as evidence of proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlords were deemed served with the NoDRP

package five days after mailing them, on April 18, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlords uploaded evidence on the RTB website on August 10, 2022. The Landlords did not provide proof of service of their evidence on the Tenant. The Tenant denied receiving any evidence from the Landlords for this matter.

RTB Rules of Procedure 3.15 and 3.16 specify how the respondent's evidence must be provided, and service proven. It states:

3.15 Respondent's evidence provided in single package

... The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

I find the Landlords did not provide proof of service of her evidence package on the Tenant which she uploaded on the RTB website. I decline to consider the Landlords' evidence submitted to the RTB website.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order for the Landlord to return part or all of the Tenant's security deposit back?
3. Is the Tenant 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 periodic tenancy began on October 1, 2011. The Tenant testified that a move-in condition inspection was not completed at the beginning of the tenancy. Monthly rent was \$946.48 payable on the first day of each month. A security deposit of \$425.00 was collected on September 29, 2011 and is still held by the Landlords. The Tenant moved out of the rental unit on December 15, 2021, and the Landlords personally served the move-out condition inspection report to the Tenant on December 22, 2021.

The Landlords personally served a Two Month Notice to End Tenancy For Landlord's Use of Property (the "Two Month Notice") on September 16, 2021. The Landlords Witness provided sworn testimony about service of the Two Month Notice. The reason to end tenancy noted on the Landlord's Two Month Notice was that a child of the Landlord or Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was November 30, 2021.

The Tenant was upset when the Two Month Notice was served on her by the Landlords. She was worried she would not be able to find a new place to live in two months. She asked for three months, but the Landlords denied the extension. The Tenant moved out of the rental unit on December 15, 2021, and the Landlords returned half a month's rent to the Tenant for the time she did not have access to the rental unit.

The Tenant testified that the move-out condition inspection report stated that the Tenant did not owe the Landlords any compensation for damage to the rental unit. The Tenant stated that she did not allow the Landlords to keep any of her security deposit for damage to the rental unit. The Tenant provided her forwarding address on the move-out condition inspection report. The Tenant also served the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit, #RTB-47 form, to the Landlords by registered mail on January 19, 2022. The Landlord confirmed receipt of the Tenant's notice of her forwarding address.

The Landlord testified that the Tenant verbally told her that she could keep the Tenant's security deposit because of her unknown date of moving. The Tenant stated that the

Landlord told her since the Tenant did not move out before the effective date of the Two Month Notice, she was not entitled to the one month's compensation. The Tenant called the RTB and was told by an Information Officer that she was entitled to the one month's rent compensation and the return of her security deposit. The Tenant seeks the one month's rent compensation from the Landlords and the return of her security deposit and any interest that may have accrued on it.

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.

Security deposits

Under Sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and the *Residential Tenancy Regulation*. Further, Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties, I accept that the tenancy ended on December 15, 2021 and that the Tenant provided her forwarding address to the Landlords on January 19, 2022 by registered mail. I find that the Landlords were deemed served with the Tenant's forwarding address five days after mailing it on January 24, 2022 in accordance with Sections 88(c) and 90(a) of the Act.

The Tenant stated that a move-in condition inspection prior to the Tenant moving into the rental unit pursuant to Section 23 of the Act was not done. On December 15, 2021, the Landlords and Tenant did a move-out condition inspection of the rental unit, and the Landlords gave the move-out condition inspection report to the Tenant on December 22, 2021. The Tenant did not sign the move-out condition inspection report. There was no indication on the move-out condition inspection report that the Tenant agreed to any deductions from her security deposit.

Based on the testimony of the parties about move-in and move-out condition inspections, I find the Tenant did not extinguish her rights in relation to the security deposit pursuant to Sections 24 or 36 of the Act. In contrast, the Landlords did extinguish their right to claim against the security deposit for damage to the residential

property because no move-in condition inspection report was completed or executed. Either way, the move-out condition inspection report stated that no damage was done to the rental unit, and the Tenant did not sign off on the report that the Landlords were entitled to retain a part or all of the security deposit.

A security deposit is defined as money paid to the landlord to be held as security for *any liability or obligation of the tenant* respecting the residential property. As there was no damage done to the rental unit, the Landlords had 15 days after the Landlords received the Tenant's forwarding address in writing, therefore February 8, 2022, to repay the security deposit to the Tenant pursuant to Section 38(1)(c) of the Act. The Landlords had not returned the security deposit by February 8, 2022, and therefore did not comply with Section 38(1) of the Act in relation to the security deposit. Given this, and pursuant to Section 38(6) of the Act, the Landlords cannot claim against the security deposit and must return double the security deposit to the Tenant. The Landlords therefore must return **\$850.00** to the Tenant. No interest is owed on the security deposit because the amount of interest owed has been 0% since 2009.

Tenant's compensation: section 49 notice

As the Landlords provided a Section 49 notice to end tenancy, the Two Month Notice, the Tenant was entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement in accordance with Section 51(1) of the Act. The Tenant is entitled to **\$946.48** compensation from the Landlords pursuant to Section 67 of the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant's total monetary award is calculated as follows:

Monetary Award

Return of double the security deposit	\$850.00
Section 49 Tenant's compensation	\$946.48
Plus application filing fee	\$100.00
TOTAL MONETARY AWARD:	\$1,896.48

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$1,896.48 The Landlords must be served with this Order as soon as possible. Should the Landlords 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: September 08, 2022

Residential Tenancy Branch