



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD**

Introduction

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

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

The hearing was conducted via teleconference. The Landlord and two supports, 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 he served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on March 9, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as 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 on March 8, 2022, but the Canada Post tracking app on their website states it was delivered on March 10, 2022. I find that the Landlord was sufficiently served with the NoDRP package on March 10, 2022 in accordance with Section 71(2)(b) of the Act.

The Landlord served the Tenant with his evidence by Canada Post registered mail on July 21, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's evidence. I find that the Landlord's evidence was deemed served on the Tenant on July 26, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. 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 tenancy began as a fixed term tenancy on September 1, 2015. The fixed term ended on August 31, 2018, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,200.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant stated the tenancy ended on August 31, 2020.

The Tenant testified that a move-in condition inspection report was completed at the start of the tenancy, and he uploaded a copy into his documentary evidence.

The Tenant said a move-out condition inspection report was not completed between him and the Landlord. The Tenant argued that he was disappointed in the lack of professionalism from the Landlord at that time. He said the Landlord tried to negotiate to hold as much of the security deposit as he could, but the Tenant did not agree.

The Landlord testified that on August 31, 2020, he attempted to conduct the move-out condition inspection report with the Tenant at 12:45 p.m. for a move out at 1 p.m. The Tenant asked for more time to do the condition inspection, and asked for the Landlord to return at 5:30 p.m. Finally, at 6:00 p.m., the Landlord and his wife began filling out the

condition inspection report noting items that remained dirty and he said the Tenant and his wife got aggressive and turned away. The Landlord uploaded a copy of the move-out condition inspection report, and it notes that the Landlord sought to keep \$750.00 of the security deposit, but the Tenant refused to sign the document. The move-out condition inspection report does not contain the Tenant's forwarding address.

The Tenant testified that he could have sent his forwarding address by registered mail, but that it was possible he sent it by regular mail. The Landlord uploaded an email to the Tenant which states:

*Sent: September 9, 2020 5:26 PM
Subject: Re: Damage deposit*

Hi [Tenant], today I have received a letter from you with your new mailing address [address]. Thank you, and I will mail you cheque for \$250 for remaining balance of your security deposit for [rental unit].

The Tenant testified that the Landlord has not applied for dispute resolution to retain a part or all of the security deposit. The Landlord confirmed he did not apply for dispute resolution claiming against the security deposit for any liability or obligation of the Tenant.

The Tenant testified that he did not give the Landlord permission to keep any of his security deposit. Also, the Tenant stated that they do have an Arbitrator's Order that the Landlord can retain a part or all the security deposit. The Tenant requests the return of his full 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.

A move-in condition inspection was completed for the rental unit at the beginning of the tenancy pursuant to Section 23 of the Act. However, a move-out condition inspection report, although completed by the Landlord and without the Tenant's signature agreeing with the report, was not forwarded to the Tenant pursuant to Section 35 of the Act and Section 18(1)(b) of the *Residential Tenancy Regulation* (the "Regulation").

The Tenant provided his forwarding address to the Landlord at the beginning of September 2020, which the Landlord confirmed receiving on September 9, 2020. The Landlord had until September 24, 2020 to return the security deposit to the Tenant 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 36(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 Tenant with a copy of a signed move-out condition inspection report in accordance with the Regulation.

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 Tenant 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 August 31, 2020 when a move-out condition inspection was done, albeit incompletely. I find the Tenant provided his forwarding address in writing which the Landlord received on September 9, 2020. The Landlord did not apply to claim against the Tenant's security deposit. I find the Landlord's right to claim against the deposit was extinguished pursuant to Section 36(2)(c) of the Act and he must therefore pay the Tenant twice the amount held in trust.

The Tenant is entitled to a Monetary Award representing repayment of his security deposit doubled pursuant to Section 38(6)(b) of the Act. As the Tenant is successful in his application, he is entitled to recovery of his application filing fee pursuant to Section 72(1) of the Act. The Monetary Award is calculated as follows:

Monetary Award

Security Deposit X 2 (\$1,000.00 X 2 =):	\$2,000.00
Plus return of application filing fee:	\$100.00
TOTAL Monetary Award:	\$2,100.00

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$2,100.00. 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: September 29, 2022

Residential Tenancy Branch