



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 723 FIELD ST. HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$400.00 for damage or compensation under the Act; and for a monetary order for the return of the \$550.00 security deposit and the \$550.00 pet damage deposit.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents in person on March 23, 2022. She confirmed that she had not submitted any evidence to the RTB or for service on the Landlord.

However, I note that the Landlord submitted evidence to the RTB, although it was

submitted a day late - too late to be considered, pursuant to the Rules. Rule 3.15 states that a respondent's evidence must be received by the RTB and the other Party not less than seven days before the hearing. As such, given this breach of the Rules and because no one attended the hearing to present the Landlord's evidence, I find I cannot consider the Landlord's evidence. Further, I find this indicates that the Landlord knew about the hearing, having been served by the Tenant in person. Accordingly, I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and I continued to hear from the Tenant in the absence of the Landlord.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me of the property management company representing the owner; however, I find it more appropriate to use the Landlord's name that was on the tenancy agreement. Accordingly, I amended the Respondent's name in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and she confirmed her address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I also advised the Tenant that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Tenant affirmed that she was not recording the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Tenant confirmed that the fixed-term tenancy began on June 1, 2020, and ran to November 30, 2020, and then operated on a periodic basis. The Tenant confirmed that pursuant to the tenancy agreement, she paid the Landlord a monthly rent of \$1,100.00, due on the first day of each month. The Tenant said that she paid the Landlord a \$550.00 security deposit, and a 550.00 pet damage deposit ("Deposits"). She said the Landlord has not returned the deposits, nor have they applied for dispute resolution to

claim against the deposits. The Tenant said the tenancy ended on February 28, 2022, and that she gave the Landlord her forwarding address via letter and text on or before February 28, 2022.

#1 COMPENSATION FOR DAMAGE OR LOSS → \$400.00

I asked the Tenant about her first claim for \$400.00 and she said:

That was in two different times, our fridge packed it in; I couldn't get them to replace it. I do all my son's cooking, as he's a really sick guy and I keep the fridge well stocked.

Twice, the fridge started heating; I lost everything in the freezer and fridge. Then it happened a second time and I lost everything again. I got him to bring in a little tiny fridge for milk one time. I went for a week each time without a fridge.

I usually spent \$200.00 - \$300.00 on shopping at [warehouse retailer], so that's what I spend when I go shopping. So, I went with a lower amount of \$200.00, each time. He passed off another unit's fridge the first time and that broke, too. I couldn't get him to budge on getting a new fridge.

The Tenant said that the tenancy agreement indicates that a refrigerator is included in the rent, and I noted this in clause 4 of the tenancy agreement.

#2 DOUBLE THE SECURITY & PET DAMAGE DEPOSITS → \$2,200.00

The Tenant said she was careful to ensure that the Landlord had her forwarding address, because she had it before she moved out and she did not want them to say they did not know where she was. The Tenant said the Landlord could have returned the deposits in a timely manner, but they returned nothing to her. The Tenant also noted that the Landlord did not apply for dispute resolution claiming against the deposits.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Tenant testified, I let her know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of

proving their claim on a balance of probabilities. Policy Guideline #16, “Compensation for Damage or Loss”, sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

(“Test”)

#1 COMPENSATION FOR DAMAGE OR LOSS → \$400.00

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. The tenancy agreement includes the refrigerator as being included in the rent, and I find it reasonable and consistent with common sense that the refrigerator must be maintained in working order. In this case, however, two successive refrigerators provided by the Landlord failed to work.

As set out in PG #16:

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. It is up to the party claiming compensation to provide evidence to establish that compensation is due.

Policy Guideline #1, “Landlord & Tenant – Responsibility for Residential Premises” (“PG #1”) is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property, and obligations with respect to services and facilities. Under the heading “Major Appliances” it states:

. . .

3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

There was no evidence presented to me indicating that the break down of the

refrigerators was in any way the Tenant's fault. However, rather, I find that the Landlord failed to administer their responsibility to provide a working refrigerator in a timely manner, and by providing a replacement refrigerator that was likely to work in the long term. I find that the Landlord has breached their obligation pursuant to section 32, the tenancy agreement, and PG #1 to provide the Tenant with a working refrigerator.

The Tenant estimated that she lost an amount of food on the lower side of her weekly food expense. I find that this would address that not all of one's grocery purchases are stored in a refrigerator or freezer. I find on a balance of probabilities that it is more likely than not that \$200.00 is a reasonable claim for having lost all of the food in the refrigerator and freezer due to spoilage when the appliance failed. I, therefore, **award the Tenant with \$400.00**, pursuant to sections 32 and 67 of the Act, representing the two occasions in which the appliance(s) failed, causing food to spoil.

#2 DOUBLE THE SECURITY & PET DAMAGE DEPOSITS → \$2,200.00

Based on the evidence before me overall, I find that the Tenant provided her forwarding address to the Landlord in writing on February 28, 2022, the same day that the tenancy ended. Section 38 (1) of the Act states the following about the connection of these dates to a landlord's obligation to return the security and/or pet damage deposits.

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit in full; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

The Landlord was required to return the \$550.00 security deposit and the \$550.00 pet damage deposit within fifteen days after February 28, 2022, namely by March 15, 2022, or to apply for dispute resolution to claim against the Deposits, pursuant to section 38 (1). The Landlord has not directed me to any evidence that they returned any amount of the Deposits, or applied to the RTB to claim against the Deposits. Therefore, I find the Landlord failed to comply with their obligations under section 38 (1).

Since the Landlord has failed to comply with the requirements of section 38 (1), and pursuant to section 38 (6) (b) of the Act, I find the Landlord must pay the Tenant double the amount of the Deposits. There is no interest payable on the security deposit. I,

therefore, **award the Tenant** with **\$2,200.00**, which is double the \$550.00 security deposit and double the \$550.00 pet damage deposit, pursuant to sections 38 and 67 of the Act.

Summary and Set Off

\$ 400.00	-award for spoiled refrigerator food;
<u>2,200.00</u>	-return of double the security and pet damage deposits.
<u>\$2,600.00</u>	Total Award

I grant the Tenant a **Monetary Order** from the Landlord of **\$2,600.00** pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to support her claims against the Landlord. The Tenant is awarded **\$400.00** for the Landlord's failure to provide a working refrigerator. The Tenant is awarded **\$2,200.00** representing double the security and pet damage deposits, for the Landlord's failure to return these pursuant to section 38 of the Act.

The Tenant is granted a **Monetary Order** from the Landlord of **\$2,600.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: November 30, 2022

Residential Tenancy Branch