



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

This matter had been scheduled for hearing on September 1, 2022 but was adjourned due to an administrative error by the Residential Tenancy Branch, the details of which are explained in my interim reasons of September 2, 2022.

S.F. appeared as the Landlord and was joined by her partner, G.D.. A.R. appeared as the Tenant. The Tenant called K.R. as a witness.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised having served the Tenant the Notice of Dispute Resolution and her evidence. The Tenant acknowledged its receipt without objection. Based on the Tenant’s acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Tenant was sufficiently served with the Landlord’s application materials.

The Tenant advised having served the Landlord by leaving her response evidence in the Landlord’s mailbox. The Landlord denies receipt of the evidence. I enquired whether

the Tenant had provided any proof that her evidence was served. I was not directed to any proof of service.

Rules 3.5 and 3.16 of the Rules of Procedure requires applicants and respondents to demonstrate service of their application materials at the hearing. It is the onus of each party to demonstrate service of their respective application materials. In this instance, I find that the Tenant has failed to demonstrate service of her application materials in accordance with the *Act*. I have been provided with no proof of service by the Tenant, which may have operated to rebut the Landlord's bare denial of receipt. Accordingly, I exclude the Tenant's response evidence as I am not satisfied it has been served.

#### Issues to be Decided

- 1) Is the Landlord entitled to claim against the security deposit?
- 2) Is the Landlord entitled to monetary compensation for repairs caused by the Tenants?
- 3) Is the Landlord entitled to monetary compensation for loss or other money owed?
- 4) Is the Landlord entitled to the return of her filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on July 31, 2021.
- The Tenants moved out of the rental unit on May 29, 2022.
- Rent of \$1,200.00 was due on the first of each month.
- A security deposit of \$600.00 was paid to the Landlord.

The Landlord testified that when the Tenants moved out, they left the rental unit in an unclean state and left garbage on the front lawn. The Landlord says the property had been sold with the new owners taking possession on May 30, 2022. I am told the Landlord paid to have the garbage removed.

The Tenant says that rental unit was clean when she vacated. K.R., the Tenant's mother, testified that they had arranged for someone to pick-up the garbage on the front

lawn on May 30, 2022, but that when they came to the property it was gone. It was argued the Landlords took the garbage despite the Tenants' arrangements.

The Landlord says a move-in inspection was conducted on July 18, 2021 and that both parties signed it and a copy was provided to the Tenants. The Tenant confirmed a move-in inspection was conducted but denies receiving a copy. She says she had seen it and signed it. I have not been provided a copy of the move-in inspection by the Landlord.

The Tenant testified to a no contact order between her and the Landlord. When asked for specifics the Tenant says that the Landlord had filed for the order after a fight she had with the Landlord. The Landlord denies there was a no-contact order.

I explain this because the Landlord says that the Tenants did not participate in the move-out inspection, despite providing opportunity to do so. The Tenant says she did not respond due to the no-contact order. According to the Landlord, the Tenant ignored her requests to conduct the move-out inspection. The Landlord's evidence includes a series of text messages dated May 29, May 30, and June 1 in which the Landlord offered to conduct the move-out inspection on May 30 at 1:00 PM and on June 1.

I am provided with a copy of the move-out inspection report conducted by the Landlord alone on June 1, 2022. I am told by the Landlord that a copy of the move-out inspection was provided to the Tenants as part of the evidence in these proceedings.

The Landlord denies receiving the Tenant's forwarding address. The Tenant says she did provide her forwarding address to a mutual friend who was supposed to pass the information to the Landlord, which she says occurred in either August or September. I understand from the Landlord that she obtained the Tenant's address for serving the application materials by asking it from the Tenant's employer.

In her application, the Landlord claims \$600.00 in compensation for both of her monetary claims. No monetary order worksheet was provided to me. No receipts were provided evidencing the expense of the garbage removal. In her testimony, the Landlord says she claims \$600.00 due to the Tenant not providing her forwarding address or conducting the move-out inspection.

The Landlord confirmed not having returned any of the security deposit to the Tenants.

## Analysis

The Landlord seeks monetary compensation by claiming against the security deposit.

Leaving aside the question of the deposit for the moment, under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

In this instance, the Landlord claims the rental unit was left in an unclean state and that garbage was left on the front lawn. There is no dispute that the Tenant left garbage on the front lawn. However, the Landlord has provided no evidence to support that any actual costs were incurred to support her monetary claims. I have been provided with no receipts or other documentation supporting any actual cost was incurred. It is the Landlord's claim. She bears the burden of proving it, which includes evidence to support the amount or value of the damage or loss. I find that the Landlord has failed to quantify her monetary claims under s. 67 of the *Act*. They are dismissed without leave to reapply.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38(1) of the *Act*.

The Landlord testifies that she seeks to keep the security deposit because the Tenant did not provide a forwarding address or participate in the move-out inspection. As a matter of course I do find that the Tenant failed to provide her forwarding address as per

s. 38(1) of the *Act*, which requires it be given in writing. Providing your forwarding address to a friend to pass along to the Landlord is wholly insufficient without evidence that some sort of written forwarding address was provided. I find that the Tenant failed to do so.

Given that no forwarding address was provided, the Landlord's application becomes the more bizarre in light of her testimony on why she seeks the monetary award of \$600.00. By reference to ss. 38(1) and 39 of the *Act*, the return of the deposit is not triggered until either the forwarding address is provided or the tenancy ends, whichever is later. Despite never receiving a forwarding address, the Landlord filed this application claiming against the security deposit. Essentially, the Landlord seeks the Residential Tenancy Branch's approval for keeping the security deposit despite not being under an obligation to return it as no forwarding address has yet been provided. I note that s. 39 of the *Act* has not been triggered as the application was made on June 10, 2021 and the tenancy ended on May 29, 2021.

Policy Guideline #17, which provides guidance with respect to security deposits and set offs, states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
  - a landlord's application to retain all or part of the security deposit; or
  - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

The guidance from Policy Guideline #17 is clear that I must consider the Tenant's right to the return of the security deposit on the Landlord's application, despite never having provided her forwarding address. In other words, the Landlord's own application triggered consideration of the return of the deposit.

Pursuant to s. 23(1) of the *Act*, a landlord and tenant must inspect the condition of the rental unit at the beginning of the tenancy or on another agreed upon date. Section 23(4) of the *Act* imposes an obligation on landlords to prepare a written condition

inspection report in accordance with the regulations and s. 23(5) requires landlords to provide a copy of the move-in inspection to tenants.

In this instance, I have not been provided a copy of the move-in inspection by the Landlord. I am told by the Landlord that it was completed on July 18, 2021. The parties confirm one was completed and signed. The Landlord says that the Tenant was provided with a copy. The Tenant denies receiving a copy of the forwarding address. I have a bare assertion by the Landlord that it was provided and a bare denial by the Tenant that it was not. Both are equally plausible. I am cognizant that this is the Landlord's application. Further, the Landlord bears the burden under s. 23(4) of the *Act* to demonstrate the condition inspection report was properly completed. I find that I have been provided with insufficient evidence to demonstrate the Landlord provided a copy of the move-in inspection to the Tenant.

This process is important because under s. 24(2)(c) of the *Act* a landlord's right to claim against the security deposit is extinguished if they fail to provide a copy of the move-in inspection report. I find that the Landlord's right to claim against the security deposit was extinguished under s. 24(2) of the *Act*.

As stated in Policy Guideline #17:

8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

In other words, despite the Tenant's failure to participate in the move-out inspection, the Landlord had already been precluded from claiming against the security deposit. The Landlord breached s. 23 of the *Act* before the Tenant breached s. 35. As the tenancy is over and as the Landlord has no right to claim against the deposit in light of the breach of s. 23, I order that it be returned to the Tenants. I note that s. 38(6) of the *Act*, which is the doubling provision, has not been triggered as the Tenant has failed to provide her forwarding address. Accordingly, I order the Landlord return the \$600.00 security deposit to the Tenants.

### Conclusion

The Landlord has failed to establish her monetary claims under s. 67 of the *Act*. They are dismissed without leave to reapply.

Despite not having provided her forwarding address, the Landlord's own application triggered consideration of the return of the security deposit. The Landlord's right to claim against the security deposit is extinguished under s. 24(2)(c) of the *Act* by failing to demonstrate that she provided a copy of the move-out inspection to the Tenant, which occurred before the Tenants' breach of s. 35.

As the tenancy is over and as the Landlord's right to claim against the security deposit is extinguished, I order that the Landlord pay **\$600.00** to the Tenants for the return of the security deposit.

The Landlord was unsuccessful in her application. I find she is not entitled to the return of her filing fee. Her claim under s. 72 of the *Act* is dismissed without leave to reapply.

It is the Tenants obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenants with 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: January 04, 2023

---

Residential Tenancy Branch