



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- a monetary order for compensation or other money owed by the Landlord to the Tenant for breach of the Act, *Residential Tenancy Regulations* and/or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord's agent ("KR"), the Tenant and the Tenant's advocate ("GK") attended this hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

GK stated the Tenant served the Notice of Dispute Resolution Proceeding and her evidence ("NDRP Package") on the Landlord in-person on June 3, 2022. KR acknowledged the Landlord received the NDRP Package. As such, I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

KR stated the Landlord served the Tenant with its evidence by registered mail on December 9, 2022. KR provided the tracking number for service of the Landlord's evidence on the Tenant. I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Issue

At the outset of the hearing, I noted the Application included a claim to seek the return of the Tenant's security and pet damage deposits. In the description of this claim, the Tenant stated the Landlord returned the security and pet damage deposits but they were returned after the 15 day period within which the Landlord was required to return the deposits. The Tenant stated the Act required the Landlord pay her an amount equal to double the security and pet damage deposits and that the Landlord has only returned one-half of the amount she is entitled to. I noted that her claim was actually for monetary compensation or other money owed by the Landlord for breach of the Act, *Residential Tenancy Regulations* and/or tenancy agreement. The Tenant requested that I amend her application to seek monetary compensation or other money owed by the Landlord for breach of the Act, *Residential Tenancy Regulations* and/or tenancy agreement.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

The description of the Tenant's claim was clear in the Application. As such, the Landlord could have reasonably anticipated the Tenant would ask for her claim to be amended to claim for compensation from the Landlord in respect of the Landlord's failure to return the security and pet damage deposits within 15 days after the Tenant provided her forwarding address to the Landlord. Based on the foregoing, I order the Application to be amended to remove the Tenant's claim for the return of the security and pet damage deposits and to add a claim that the Tenant is seeking monetary compensation from the Landlord for breach of the Act, *Residential Tenancy Regulations* and/or tenancy agreement.

Issues to be Decided

Is the Tenant entitled to:

- a monetary order for compensation or other money owed by the Landlord to the Tenant for breach of the Act, *Residential Tenancy Regulations* and/or tenancy agreement?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

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

The Tenant submitted into evidence a copy of the tenancy agreement ("Tenancy Agreement") dated February 7, 2020 between the parties. The Tenancy Agreement states the tenancy commenced on March 1, 2020, with a fixed term ending February 28, 2021. The rent payable by the Tenant was \$2,100.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00 payable by February 8, 2020. KR confirmed the Tenant paid the security and pet damage deposits. The parties agreed the Tenant vacated the rental unit on February 26, 2022.

GK stated submitted into evidence a copy of the move-in condition inspection report performed on February 29, 2020 and the move-out condition inspection report performed on March 26, 2022. GK stated the Tenant provided her forwarding address on page 3 of the move-out condition inspection report.

KR stated the Landlord sent a cheque totalling \$2,100.00 for the return of the deposits to the Tenant by mail on April 12, 2022.

Analysis

Sections 23(1), 35(1), 38, 38.1(1) and 39 of the Act state:

- 23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- 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.*
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36(1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
 - (5) *The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
 - (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
 - (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
 - (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
 - (a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.
- 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.*

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis in italics added]

The Landlord and Tenant performed the move-in and move-out condition inspection reports. As such, the parties complied with the provisions of sections 23(1) and 35(1) of the Act. The parties agreed the Tenant provided her forwarding address on the move-out condition inspection report on March 26, 2022. The parties agreed the Tenant vacated the rental unit on March 26, 2022. The Tenant made the Application on April 22, 2022. As such, the Tenant made the Application within one year of the date the tenancy ended. Based on the foregoing, I find the Tenant's right to seek the return of her security deposit pursuant to section 39 has not been extinguished by the provisions of section 39 of the Act.

Pursuant to section 38(1) of the Act, the Landlord had 15 days after March 26, 2022, or April 15, 2022, being the next business day after the expiry of the 15-day period, within which to return the security and pet damage deposits to the Tenant or, alternatively, make an application for dispute resolution to make a claim against the deposits. KR stated the Landlord mailed a cheque for the return of the deposits to the Tenant on April 12, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the cheque on April 17, 2022. As such, the Landlord did not comply with the requirements of section 38(1) of the Act. Based on the above, section 38(6) requires the Landlord to pay the Tenant an amount equal to double the security deposit of \$1,050.00 and pet damage deposit of \$1,050.00. Based on the foregoing, I find the Tenant has demonstrated, on a balance of probabilities, that the Landlord is required to pay her an amount equal to double the deposits of \$2,100.00, being \$4,200.00, pursuant to section 38.1(1). The Landlord has returned \$2,100.00 to the Tenant leaving a balance of \$2,100.00. As such, I order the Landlord to pay the Tenant \$2,100.00. As the security deposits were given by the Tenant to the Landlord in 2020 and returned to her by the

Landlord prior to January 1, 2023, the Tenant is not entitled to any interest on the deposits.

As the Tenant has been successful in the Application, she may recover the \$100.00 filing fee from the Landlord pursuant to section 72(1) of the Act.

Conclusion

The Landlord is ordered to pay the Tenant \$2,200.00 calculated as follows:

Description	Amount
Award of double the security deposit: (2 x \$1,050.00)	\$2,100.00
Award of double the pet damage deposit: (2 x \$1,050.00)	\$2,100.00
Recovery of filing fee of Application:	\$100.00
Credit for amount paid by Landlord to Tenant:	-\$2,100.00
Total	\$2,200.00

The Tenant must serve this decision and attached monetary order on the Landlord as soon as possible after receiving a copy of it from the Residential Tenancy Branch.

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 31, 2023

Residential Tenancy Branch