



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

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

- The return monetary order for \$1,750 representing two times the amount of the security deposit, less the amount already returned, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued May 31, 2022.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$1,750;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting March 15, 2021 and ending March 15, 2022. The tenants moved out of the rental unit on February

28, 2022. Monthly rent was \$2,500 and was payable on the first of each month. The tenants paid the landlord a security deposit of \$1,250 at the start of the tenancy.

The parties agree that the tenants gave the landlord their forwarding address, in writing, on March 12, 2022.

The parties conducted a move in condition inspection at the start of the tenancy. The landlord did not provide the tenants with a copy of the move-in condition inspection report. The parties conducted a move-out condition inspection on February 28, 2022. The landlord did not provide the tenants with a copy of the move-out condition inspection report.

The tenants testified that after the move out inspection, The landlord stated that the condition of the rental unit was "fine" and gave them a check for the full amount of the security deposit.

The landlord testified that she provided them with a mailbox key at the start of the tenancy but that the tenants requested that the mailbox key be changed. The landlord did this. She also testified that she purchased the tenants a screen door and new lights in one of the bedrooms and hired an electrician to install these lights. She also testified that during the course of the tenancy she fixed a leaking dishwasher immediately and addressed issues the tenants had with the heating.

The landlord testified that she allowed the tenants to vacate the rental unit 15 days prior to the end of the fixed term. She testified that on February 28, 2022 the tenants did not vacate the rental unit until 7:00 PM, and that she had a new tenant waiting to move in so she did the move out condition inspection quickly. Once the new tenant moved in, they discovered garbage in the basement laundry door that was damaged as well as issues with the lock on the front door.

On March 1, 2022, the landlord emailed the tenants stating that there were issues relating to the lock and doorbell and that the tenants would have to fix them or else she would deduct the cost of fixing them from the security deposit. The tenants replied that there were issues with the condition of the rental unit at start of the tenancy and that they would be cashing the deposit cheque the next day. However, the evidence indicates that they did not cash the cheque the next day, or at all.

On March 2, 2022, the landlord sent the tenants a further e-mail indicating that the new tenants had discovered additional problems with the rental unit. On March 8, 2022 the landlord sent the tenants an itemized list of "the cost for handling the things you left behind" totalling \$507.49. She wrote that she would like to deduct \$500 from the security deposit and transfer the tenants \$750.

She did not receive any reply from the tenants and on March 10, 2022 she transferred the \$750 to the tenants via etransfer. She asked that the tenants destroy the cheque she had given them on February 28, 2022. The \$750 transfer was automatically deposited in the tenants' bank account and the tenants have not returned it to the landlord.

On March 10, 2022, the tenants emailed the landlord and indicated that they did not consent to only receiving \$750 of the security deposit, and asserted an entitlement to the full amount (\$1,250). The landlord replied "are you trying to find reasons to cash that check? If you do that, I will consider it stealing and will file the police report against you."

The tenants testified that they never cashed the cheque as a result.

Analysis

I accept that the tenants paid the landlord a security deposit of \$1,250 at the start of the tenancy and that the landlord returned \$750 of it on March 8, 2022.

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Based on the evidence presented at the hearing, I find that the tenancy ended on February 28, 2022 and that the tenants provided their forwarding address in writing to the landlord on March 12, 2022.

While I find that the landlord provided the tenants with a cheque for the full amount of the security deposit on February 28, 2022, the tenants did not cash it as a direct result of the landlord's threats to report them to the police if they did so. As such, I do not find that the landlord can be said to have returned the full amount of the security deposit to the tenants within 15 days of receiving the tenants' forwarding address, or at all.

Additionally, the landlord did not make an application to the Residential Tenancy Branch claiming against the security deposit within 15 days of receiving the forwarding address, or at all.

It was not enough for the landlord to allege the tenants caused damage to the rental unit. She must actually make her own application for dispute resolution and claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlord did not do this. Accordingly, I find that she has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that she pay the tenants double the amount of the security deposit. Policy Guideline 17 provides an example as to how to calculate this amount, when a landlord has returned a portion of the security deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

As the landlord has returned \$750 of the security deposit, I order that the landlord pay the tenants \$1,750 ($\$1,250 \times 2 = \$2,500$; $\$2,500 - \$750 = \$1,750$).

Furthermore, section 36(1)(c) of the Act requires the landlord to return all interest accrued on the security deposit during the tenancy. Policy Guideline 17 states:

Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

Interest is payable on the full amount of the security deposit. However, the interest rate payable under the Act on March 8, 2022 was 0%. As such, I do not find it appropriate to order the landlord pay any interest on the \$750 of the security deposit that the landlord returned on that date. She must, however, pay the accrued interest of the \$500 she continues to hold.

The RTB Deposit Interest Calculator sets out the interest payable on \$500.00 as \$1.42.

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenant \$amount, representing the following:

Description	Total
Double the security deposit	\$2,500.00
Deduction for amount returned	-\$750.00
Interest	\$1.42
Filing fee	\$100.00
	\$1,851.42

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: February 22, 2023

Residential Tenancy Branch