



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- return of the Tenant's security deposit and/or pet damage deposit in the amount of \$600.00 pursuant to section 38;
- compensation in the amount of \$600.00 for monetary loss or money owed by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package (the "NDRP Package") and documentary evidence. I find the Landlord was served with the NDRP Package and the Tenant's documentary evidence in accordance with sections 88 and 89 of the Act.

The Landlord relied on oral testimony and the documentary evidence submitted by the Tenant.

Preliminary Matter – Clarification of the Tenant's Claims

The Tenant's application indicates that he is seeking the return of his security deposit, \$500.00 in aggravated damages, and the \$100.00 filing fee. I find the Tenant duplicated his claim for the filing fee under his claim for monetary compensation.

I also note the Tenant had submitted a monetary worksheet which includes a claim of \$194.88 and a Rogers receipt for this amount dated May 4, 2022. However, I find the Tenant did not amend his application to include this claim. Under Rule 2.2 of the Rules of Procedure, the claim is limited to what is stated in the application. As such, I am unable to consider the Tenant's claim under this part.

Based on the foregoing, I have clarified the issues to be decided below.

Issues to be Decided

1. Is the Tenant entitled to return of the \$600.00 security deposit?
2. Is the Tenant entitled to \$500.00 for aggravated damages?
3. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

This tenancy commenced on June 1, 2020 and ended on May 1, 2022. Rent was \$1,200.00 per month. The Tenant paid a security deposit of \$600.00. A copy of the tenancy agreement has been submitted into evidence.

According to the Landlord, the Tenant had not seen the rental unit and a walkthrough was to be done after the Tenant arrived. The Tenant stated he was told that the rental unit was in good condition. The parties agreed that there was no move-in condition inspection report.

The Tenant stated that the issues started with the Landlord asking for the Tenant's personal tax information and what expenses he had claimed. The Tenant stated he informed the Landlord that it was none of her concern and an invasion of the Tenant's privacy.

The Tenant submitted that the Landlord asking for his personal tax information and accusing the Tenant of mail fraud caused the Tenant a lot of undue stress. The Tenant stated that mail for both parties went to the Landlord's mailbox. The Tenant referred to an email dated May 1, 2022 from the Landlord, in which the Landlord alleged that the Tenant was going through her mailbox and that it was a federal offense.

In response, the Landlord stated that she had sent an email to the Tenant on March 28, 2022, to clarify whether the Tenant had claimed any home office expenses with respect to the rental portion of the home for the 2021 taxation year. The Landlord explained that her accountant had asked the Landlord to ask the Tenant, because the Landlord also claims part of the basement as a home-based business. The Landlord stated she wanted to know how much of the basement the Tenant was claiming. The Landlord denied asking for the Tenant's personal income tax information.

The Tenant stated that the Landlord also turned off the wifi, which the Tenant needed for work. The Tenant stated that the wifi password was on the tenancy agreement and wifi had always been included in the rent. The Tenant stated that the rental unit had been advertised as including wifi. The Tenant stated that the wifi password was changed because he had tried typing it. The Tenant stated that he contacted the Residential Tenancy Branch and was told to put a letter in the Landlord's mailbox with a request to re-instate the wifi or reduce the rent if wifi was no longer being included. The Tenant argued that he was entitled to work from home and that the Landlord could not impose restrictions.

According to the Landlord, wifi was never advertised or included in the tenancy agreement. The Landlord explained that she contacted her service provider to add the Tenant to her cable. The Landlord confirmed that cable was included in the rent. The Landlord stated she did not understand what wifi is. The Landlord stated that she is in her seventies and not tech savvy.

The Landlord stated that the Tenant would appear at her door upset about the wifi, and she did not feel comfortable about his presence. The Tenant disagreed with this. The Landlord stated that she received more emails from the Tenant about the wifi not working, so she would ask her service provider to check. The Landlord stated that she did not understand what they were doing, and the Tenant would get more upset. The Landlord stated that she hired a tech company to look into the wifi issue in April and May 2022. The Landlord stated that she was told the Tenant had a lot of equipment showing up on the wifi, such as printers, xerox, and computers, which the Landlord

believed were related to the Tenant's business. The Landlord stated that the wifi was not included but a courtesy, after she found out about the Tenant using it.

The Tenant disagreed that the internet password on the tenancy agreement was for cable. The Tenant denied having heard from the tech company hired by the Landlord.

The Tenant stated that after numerous attempts to communicate with the Landlord, he did not feel comfortable living at the rental unit anymore and decided to look for another place. The Tenant stated that he told the Landlord via email on April 18, 2022 that he would move out due to the Landlord's fundamental breach of their tenancy agreement. The Tenant submitted a copy of an email dated April 18, 2022 to the Landlord, in which the Tenant also provided the Landlord with his forwarding address. The Tenant acknowledged that he agreed for the Landlord to deduct up to \$50.00 for carpet cleaning upon providing a receipt, but the Landlord did not provide one.

The Tenant confirmed that he moved out of the rental unit on May 1, 2022. The Tenant stated that he cleaned the house thoroughly and took a video. The Tenant stated that he texted the Landlord to do a walkthrough, which the Landlord refused.

The Landlord acknowledged that the Tenant had left the rental unit "spotless". The Landlord denied having received the Tenant's forwarding address until when she received notice of this application. The Landlord explained that she did not return the security deposit to the Tenant because he gave her notice in April 2022, so the Tenant was short on notice. The Landlord stated that she was not able to advertise the rental unit for June 1, 2022 and her current tenant had signed on for June 15, 2022.

The Tenant submitted that he was seeking \$500.00 in aggravated damages because the Landlord took away his internet causing the Tenant to be unable to work, invading the Tenant's privacy and confidentiality, and accusing the Tenant of committing a federal crime. The Tenant stated that he suffered mental distress.

Analysis

1. Is the Tenant entitled to return of the \$600.00 security deposit?

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.

In this case, I find the tenancy ended on May 1, 2022.

I find the Tenant provided his forwarding address in writing to the Landlord in an email dated April 18, 2022. I find the Tenant sent further emails in the same email chain to the Landlord on April 18 and 24, 2022. I find the Landlord eventually replied on April 29, 2022 and asked the Tenant to remove all garbage from the property by the time he vacated. Based on this email correspondence evidence, I find the Landlord was sufficiently served with notice of the Tenant's forwarding address in writing on April 29, 2022, pursuant to section 71(2)(b) of the Act.

Therefore, I find the Landlord had until May 16, 2022, or fifteen days after the tenancy ended to return the security deposit to the Tenant or make an application for dispute resolution to claim against the security deposit under section 38(1) of the Act. I find the Landlord did not return the Tenant's security deposit or make an application to claim against the deposit by May 16, 2022.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find the Tenant was not given two opportunities for a move-in inspection in accordance with the Act and the regulations. I find the Landlord's right to the security deposit was

extinguished first under section 24(2)(c) of the Act, since there was no move-in inspection report. Therefore, I conclude the Tenant's right to the return of the security deposit was not extinguished under any of sections 24(1), 36(1), or 38(2) of the Act.

Policy Guideline 17 further states that the arbitrator will order the return of double the deposit unless the tenant has "specifically waived" the doubling of the deposit. In this case, I do not find the Tenant to have specifically waive the doubling provisions of the Act.

I note the Tenant had agreed in writing for the Landlord to retain up to \$50.00 for carpet cleaning upon being given a receipt by the Landlord. However, I do not find that the Landlord had given the Tenant such a receipt.

Therefore, I find the Tenant is entitled to a return of double the security deposit with interest under sections 38(1) and 38(6) of the Act.

The interest rate on deposits from 2020 to 2022 has been 0% per annum, and 1.95% per annum in 2023. According to Policy Guideline 17, interest is calculated on the original security amount, before any deductions are made, and is not doubled. Therefore, using the Residential Tenancy Branch Deposit Interest Calculator online tool, I conclude the Tenant is entitled to \$2.12 of interest on his security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2020 \$600.00: \$0.00 interest owing (0% rate for 58.48% of year)
2021 \$600.00: \$0.00 interest owing (0% rate for 100.00% of year)
2022 \$600.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$600.00: \$2.12 interest owing (1.95% rate for 18.08% of year)

Pursuant to sections 38(1) and (6) of the Act, I order the Landlord to pay the Tenant \$1,202.12 for the return of double the security deposit plus interest.

2. Is the Tenant entitled to \$500.00 for aggravated damages?

Under section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant claims \$500.00 for aggravated damages. According to Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss:

Aggravated damages are damages for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case, I do not find an award of aggravated damages to be appropriate.

I have reviewed the email from the Landlord to the Tenant dated March 29, 2022. I am not satisfied that the Landlord had invaded the Tenant's privacy or confidentiality by asking about expenses that the Tenant was claiming for tax purposes. I accept the Landlord's explanation that she asked the Tenant because she was also claiming a portion of the basement for home office expenses. Furthermore, I find the Tenant was not obligated to provide any of his own personal tax information to the Landlord in response.

In addition, I am not satisfied that a claim with regards to loss of internet warrants an award of aggravated damages. I also do not find the Tenant to have suffered damage or loss due to the Landlord's email alleging that the Tenant had committed a federal offense by going through her mailbox. I note that although the Tenant claimed to have suffered undue stress and mental distress, I do not find the Tenant to have submitted any medical records or evidence in support of this claim.

Accordingly, I dismiss the Tenant's claim for aggravated damages under section 67 of the Act without leave to re-apply.

3. Is the Tenant entitled to reimbursement of the filing fee?

The Tenant has been partially successful in this application. I award the Tenant reimbursement of his filing fee under section 72(1) of the Act.

The Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Return of Double the Security Deposit (2 × \$600.00)	\$1,200.00
Interest on Security Deposit	\$2.12
Filing Fee	\$100.00
Total	\$1,302.12

Conclusion

The Tenant's claims for return of the security deposit and reimbursement of the filing are successful. The Tenant's claim for aggravated damages is dismissed without leave to re-apply.

Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,302.12**. This Order may be served on the Landlord, filed in 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: March 07, 2023

Residential Tenancy Branch