



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **TT: MNSDB-DR FFT**
 LL: MNDL-S FFL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- an order for the return of the Tenant’s security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for the Tenant’s Application from the Landlord pursuant to section 72.

The Landlord made one application (“Landlord’s Application”) for:

- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused to the rental unit during the tenancy pursuant to section 67;
- authorization to keep the Tenant’s security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for the Landlord’s Application from the Tenant pursuant to section 72.

The hearing of the Tenant’s Application was reconvened from a non-participatory, *ex parte*, “direct request” proceeding. In an interim decision dated July 20, 2022 (“Interim Decision”), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Tenant. When the Landlord made the Landlord’s Application, the Residential Tenancy Branch (“RTB”) scheduled the hearing of the Landlord’s Application so that it would be heard with the Tenant’s Application. The two Applications were

scheduled for March 30, 2023. Notices of reconvened hearing and a copy of the Interim Decision was served on the parties by the RTB, in accordance with section 89 of the Act.

The Landlord, the Landlord's translator and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution ("Tenant's NDRP") for the Tenant's Application on the Landlord by registered mail on July 23, 2022. The Tenant provided the Canada Post receipt and tracking number for service of the Tenant's NDRP on the Landlord. The Landlord acknowledged receipt of the Tenant's NDRP. As such, I find the Tenant's NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Tenant stated she served her evidence on the Landlord by registered mail on August 24, 2022. The Tenant provided the Canada Posting tracking number for service of her evidence on the Landlord. The Landlord acknowledged receipt of the Tenant's evidence. AS such, I find the Tenant's evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

The Landlord stated she served the Notice of Dispute Resolution ("Landlord's NDRP") on the Tenant by registered mail on September 22, 2022. The Tenant stated she received the Landlord's NDRP on October 7, 2022 by priority post. Although Priority Post is not a method of service permitted by section 89 of the Act, as the Tenant acknowledged she received the Landlord's NDRP, I find it was sufficiently served pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Service of Landlord's Evidence on Tenant

The Landlord stated her evidence ("Landlord's Evidence") was served o the Tenant with the Landlord's NDRP. The Tenant stated some evidence from the Landlord consisting of photographs but there was nothing else. The records of RTB indicate the Landlord submitted evidence in addition to photographs. The Landlord could not provide an explanation for why some of her evidence was not enclosed in the package sent by Priority Post. As the Landlord was not able to provide any explanation, I find the Landlord has not proven, on a balance of probabilities, that the Tenant was served with anything else than for the photographs. I will address this issue later in my decision.

Preliminary Matter – Landlord's Interruptions at Hearing

During the hearing, the Landlord kept interrupting the Tenant and me while we were speaking. I gave the Landlord two warnings, but the Landlord continued interrupting. As such, I muted the Landlord's telephone line until I completed what I was saying and until the Tenant completed providing her testimony. When it was time for the Landlord to answer questions or give testimony, I un-muted the Landlord's line.

Preliminary Matter – Other Person Present with Landlord

At the start of the hearing, I asked the Landlord who was present with her. The Landlord stated she was with CC. I then asked if there was anyone else in the room or on the line with the Landlord and she said she and CC were the only persons in the room. During the hearing, I heard CC whispering to a person who appeared to be a man. When I asked CC, who was in the room with her and the Landlord, she stated it was the television. However, I find this implausible as it was clear to me the CC was conducting a two-way conversation with another person in the background.

Preliminary Matter – Dismissal of Landlord's Application

The Landlord's Application was made on the paper form of application. The Landlord's Application did not specify the monetary amount of damages she was claiming. The RTB sent the Landlord an email in which she was requested to amend the Landlord's Application to specify the monetary amount she was claiming for damages. There is no record of the Landlord submitting an amendment to the Landlord's Application to specify the monetary amount of damages the Landlord is seeking from the Tenant.

Section 59(5)(a) of the Act states:

- 59(5) The director may refuse to accept an application for dispute resolution if
- (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
- [...]

As the Landlord did not specify an amount claimed for damages, it is my opinion that the Landlord's Application does not disclose a dispute that may be determined under Part 5 of the Act. As such, I find that I cannot adjudicate the Landlord's claim for damages against the Tenant. Based on the foregoing, I dismiss the Landlord's Application with leave to reapply. The Landlord has the option of making a new application for dispute resolution to make her monetary claims against the Tenant.

Issues to be Decided

- Is the Tenant entitled to the return of her security and pet damage deposits?
- Is the Tenant entitled to recover the filing fee for the Tenant's Application from the Landlord?
- Is the Landlord entitled a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused to the rental unit during the tenancy pursuant?
- Is the Landlord entitled to keep the Tenant's security and pet damage deposits?
- Is the Landlord entitled to recover the filing fee for the Landlord's Application from the Tenant?

Background, Evidence and Analysis

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 Landlord's Application and the Tenants' Application and my findings are set out below.

The Tenant submitted into evidence a copy of the original tenancy agreement between the Landlord and Tenant. The tenancy agreement states the tenancy commenced on January 1, 2021, for a fixed term ending June 1, 2021, with rent of 1,350.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$675.00 and a pet damage deposit of \$675.00.

The Tenant submitted into evidence a copy of the subsequent tenancy agreement between the Landlord and Tenant. The subsequent agreement stated the tenancy

commenced on July 1, 2021, for a fixed term ending April 30, 2022, with rent of \$1,350.00 payable on the 1st day of each month. The Landlord acknowledged the Tenant paid the security and pet damage deposits pursuant to the terms of the original tenancy agreement. The Landlord confirmed that she was holding the deposits in trust on behalf of the Tenant. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Tenant's Application.

The Tenant stated the tenancy ended pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 28, 2022. The Tenant stated she vacated the rental unit on April 30, 2022. The Tenant stated she served the Landlord with a written notice dated April 30, 2022 ("Tenant's Notice"), in which she provided her forwarding address. The Landlord acknowledged she received the Tenant's Notice in-person from the Tenant. The Tenant stated the Landlord has not returned her security and pet damage deposits.

The Landlord stated she did not return the Tenant's security and pet damage deposits because the Tenant caused damages to the rental unit. When I asked, the Landlord admitted that she did not schedule or complete move-in or move-out inspections with the Tenant and that there are no written inspection reports. The Tenant confirmed the Landlord did not schedule or complete move-in and move-out inspections with her.

Sections 23, 24, 35, 36, 38(1), 36(6), 38(1), 38(6) and 38.1(1) 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.*
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
- (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
 - (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) *having complied with section 23 (3), does not participate on either occasion*, or
 - (c) *does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

- 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.
- (2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (3) *The landlord must complete a condition inspection report in accordance with the regulations.*
- (4) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
- (a) *does not comply with section 35 (2) [2 opportunities for inspection],*
 - (b) *having complied with section 35 (2), does not participate on either occasion, or*
 - (c) *having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*
- 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.*
- [...]
- (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.
- 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.

[emphasis in italics added]

The Landlord did not complete the move-in and move-out inspection reports as required by sections 23(1) and 35(1) of the Act. As such, the Landlord's right to claim against the Tenant's security and pet damage deposits was extinguished. As such, section 38.1(1) permits the Tenant to make an application to request an order for the return of an amount that is double the portion of the security deposit if the Landlord did not apply for dispute resolution within 15 days of receipt of the Tenant's written notice of their forwarding address. The records of the RTB indicate the Landlord did not make an application for dispute resolution within the 15-day period permitted under section 38(1) of the Act. Based on the foregoing, I find the Tenant has proven, on a balance of probabilities, that she is entitled to the return of double the amount of the security and pet damage deposits pursuant to section 38.1 of the Act plus interest pursuant to section 38(1)(c) of the Act. As such, I order Landlord to pay the Tenant \$2,700.00 representing double the security and pet damage deposits plus interest of \$16.73, calculated as follows:

Description	Amount
Return of 2 times the Security Deposit of \$675.00	\$1,350.00
Return of 2 times the Pet Damage Deposit of \$675.00	\$1,350.00
Interest on \$2,700.00 calculated at 1.95% per annum from January 1 to April 26, 2023	\$16.73
Total:	\$2,716.73

As the Tenant has been successful in the Tenant's Application, pursuant to section 72(1), I order the Landlord to reimburse the Tenant for the \$100.00 filing fee for the Tenant's Application.

Conclusion

I Landlord is ordered to pay the Tenant \$2,816.73 calculated as follow:

Description	Amount
Return of 2 times the Security Deposit of \$675.00	\$1,350.00
Return of 2 times the x Pet Damage Deposit of \$675.00	\$1,350.00
Interest on \$2,700.00 calculated at 1.95% per annum from January 1 to April 26, 2023	\$16.73
Reimbursement of filing fee for Tenant's Application	\$100.00
Total:	\$2,816.73

The Tenant must serve the Monetary Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, this Order may be 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: April 26, 2023

Residential Tenancy Branch