



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This matter was adjourned to written submissions following a hearing on April 17, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$1,102.78 and \$13,219.50 for monetary loss or other money owed pursuant to section 67;
- return of the Tenant's security deposit in the amount of \$425.00 pursuant to section 38; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

By an interim decision dated April 17, 2023 (the "Interim Decision"), I adjourned this matter to written submissions with a deadline of April 21, 2023. This decision should be read together with the Interim Decision.

Preliminary Matter - Jurisdiction

The Landlord argued that the Tenant was not a legal tenant but was a roommate. The Landlord stated that there was only an unlocked door between the Tenant's downstairs basement suite and the upstairs area of the home occupied by the Landlord. The Landlord stated that there was no stove in the basement, only a hotplate. The Landlord submitted that the municipality did not allow two additional legal suites. The Landlord explained that there was already a different legal suite in the property and it is still occupied by the same tenant.

The Tenant denied that he was the Landlord's roommate. The Tenant stated that his downstairs suite was self-contained, with its own separate entrance, kitchen, and bathroom. The Tenant stated that he had a convection oven, microwave, and fridge. The Tenant submitted that he did not have access to the rest of the house. The Tenant

also submitted that the Landlord used Residential Tenancy Branch forms for rent increases and a notice to end tenancy.

Section 2(1) of the Act states that subject to section 4 of the Act, the Act applies to tenancy agreements, rental units, and other residential property. Section 1 of the Act defines a rental unit as living accommodation rented or intended to be rented to a tenant.

Section 4 of the Act describes situations where the Act does not apply. For example, under section 4(c) of the Act, the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Based on the evidence presented, I find the Tenant did not share bathroom or kitchen facilities with the Landlord. I find the Tenant had his own bathroom facilities. I find that while the Tenant may not have had a full kitchen, there is no evidence to indicate that the parties had shared the food preparation facilities in the basement or that the Tenant had used the Landlord's kitchen facilities upstairs. I find the basement suite occupied by the Tenant to be living accommodation to which the Act applies. I do not find any other the other exclusions in section 4 of the Act to be applicable in the circumstances. I note that it is not necessary for the rental unit to be a legal suite under municipal bylaws for the Act to apply. I also note that having an unlocked door between the Landlord and the Tenant's suites is not determinative if the parties did not otherwise share bathroom or kitchen facilities. I conclude that the Act applies in the circumstances and that I have jurisdiction to decide this dispute.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of the Tenant's amendment and additional documentary evidence. The Landlord also confirmed receipt of a courtesy copy of the Tenants' initial documentary evidence emailed during the hearing. The Tenant acknowledged receipt of the Landlord's documentary evidence.

Following the hearing, the parties also provided written submissions as per the Interim Decision. I find the parties were sufficiently served with each other's dispute resolution documents, and I have considered them for the purpose of this decision.

I note that in the Landlord's submissions, she opposed an argument made by the Tenant about the law on security deposits as "new evidence". However, I do not find this

to be evidence, as it is an argument about what the law says. In this decision, I will be referring to and applying the relevant law whether or not the parties have cited a specific section of the Act in their submissions.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to a return of the security deposit?
3. Is the Tenant entitled to reimbursement of his filing fee?

Background and Evidence

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

This tenancy commenced with a previous landlord on May 1, 2011 and continued on a month-to-month basis. According to the Tenant, rent was \$850.00 per month with all utilities included, and the Tenant had paid a security deposit of \$425.00. The Tenant submitted a signed statement from his previous landlord which confirms this. There was no written tenancy agreement, move-in condition inspection, or condition inspection report.

The Landlord purchased the property in October 2020. According to the Tenant, the Landlord said she couldn't afford to pay for TV and internet, so he agreed to pay the Landlord \$30.00 more per month for internet. The Tenant stated the Landlord later increased this amount from \$30.00 to \$50.00 per month, and there were also some rent increases thereafter. The Tenant indicated that at the time the tenancy ended in June 2022, he was paying the Landlord \$919.00 per month for rent.

The Tenant submitted that cable had been included in the rent previously, but he opened his own Shaw account as did not want to "rock the boat" with the Landlord. The Tenant now seeks to recover the amounts he paid for cable since the Landlord took over the tenancy.

According to the Landlord, she took possession of the property on October 29, 2020, but based on the Tenant's Shaw statement of account in his evidence, the Tenant had

already opened an account and had a bill dated October 27, 2020. The Landlord submitted that she never had cable TV and the Tenant had agreed to pay for it himself. The Landlord submitted that she was unaware of any formal agreement between the Tenant and the previous landlord. The Landlord understood from the previous landlord that the Tenant's rent included basic utilities such as gas, water, and hydro. The Landlord submitted that later rent was \$893.50 per month and the Tenant paid \$25.50 per month for internet, out of the approximately \$100.00 total per month that the Landlord was paying for internet. The Landlord stated that she had asked the Tenant if he wanted faster internet, and he had agreed to split the difference. The Landlord argued that the Tenant had paid his Shaw cable for two years and never had a problem until now.

In May 2022, the Landlord served the Tenant with a two month notice to end tenancy for landlord's use of property dated May 31, 2022 (the "Two Month Notice"). It states that the rental unit will be occupied by the landlord or the landlord's close family member, in this case, the landlord or the landlord's spouse. This notice is signed by the Landlord and provides an effective date of July 31, 2022.

The Tenant served the Landlord with a notice dated June 13, 2022 (the "Tenant's Notice"), which states that the Tenant will be vacating the suite "on or before June 30 by 1 pm". This notice also provides the Tenant's forwarding address. The Tenant submitted a copy of this notice and a photo showing it attached to the Landlord's door into evidence.

The Tenant moved out of the rental unit on June 24, 2022. According to the Tenant, there was a brief walkthrough with the Landlord but no formal move-out inspection or move-out condition inspection report.

The Landlord did not agree to return the Tenant's security deposit after the tenancy ended. The Landlord explained that there was damage to the rental unit including damage to the flooring. The Landlord submitted photos into evidence.

The Tenant submitted that he believes he was wrongfully evicted as the Landlord has other people living in the basement suite. The Tenant provided photos of mail addressed to the property with the names JO and KB.

In this application, the Tenant seeks compensation for the following:

Item	Amount
Refund of Rent from June 25 to 30, 2022 (\$919.00 × 6/30 days)	\$183.80
Compensation of 1 Month's Rent	\$919.00
Compensation of 12 Months' Rent (\$919.00 × 12 months)	\$11,028.00
Reimbursement of Shaw TV Charges	\$2,191.50
Return of the Security Deposit	\$425.00
Filing Fee	\$100.00
Total	\$14,847.30

In response, the Landlord denied that she had wrongfully evicted the Tenant. The Landlord testified that her family took over the basement level after the Tenant moved out. The Landlord stated that the basement is part of her main dwelling in the home. According to the Landlord, her teenage children used and continue to use the downstairs living room as their recreation room, and hang out with friends there. The Landlord stated that her daughter moved downstairs into one of the bedrooms starting in September 2022. The Landlord indicated she started painting areas of the basement in March 2023 and temporarily moved her daughter back up during the painting. The Landlord submitted recent photos of the basement level into evidence.

The Landlord testified that she reached out to JO and learned that JO used to live at the property years ago. The Landlord confirmed that JO did not live at the property after the Tenant moved out.

The Landlord testified that KB was a homestay student who had stayed with the Landlord's family from September 2022 to February 2023 for sports. The Landlord explained that she was KB's guardian during that time and was subsidized for his living expenses, which was not registered as income. The Landlord acknowledged that KB had a bedroom downstairs, but argued that KB lived in the Landlord's entire household and participated in their activities.

RV testified that he has known the Landlord throughout this entire process. RV stated that JO did not live at the property. According to RV, the basement level was part of the Landlord's home and it was an open space, with KB coming upstairs and the Landlord's children having friends over and hanging out downstairs. RV agreed that the subsidy received for KB was to cover KB's living expenses and did not qualify as income for the Landlord.

Analysis

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

Section 67 of the Act states that 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.

According to Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I will address each of the items for compensation claimed by the Tenant in the following order: (a) partial refund of June 2022 rent and one month's compensation, (b) compensation of 12 months' rent, and (c) reimbursement of Shaw TV charges.

As a preliminary matter, I find that at the time this tenancy ended, rent was \$919.00 per month due on the first day of each month. I find there is insufficient evidence, and no evidence in writing, to show that internet of \$25.50 per month was based on the Tenant's actual usage or a clear percentage split of the total bill, instead of simply being included in the rent which was increased by this specific amount. I find the parties' arrangement was that the Tenant paid a total amount of \$919.00 per month which included internet access. Therefore, I will proceed on the basis that rent was \$919.00 per month at the time that the tenancy ended.

a. June 2022 Rent and One Month's Compensation

Under section 49(3) of the Act, a landlord may end a tenancy if a landlord or close family member of the landlord intends in good faith to occupy the rental unit. A close family member includes a parent, spouse, or child of the landlord or the parent or child of the landlord's spouse. Section 49(2) of the Act requires the effective date of a notice to end tenancy under this section to be not earlier than two months after the date the tenant receives the notice.

Under section 50(1) of the Act, if a tenant receives a two month notice to end tenancy for the landlord's use, the tenant may end the tenancy early by:

- giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice; and
- paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice.

If the tenant already paid rent before giving notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice (section 50(2) of the Act).

Section 51(1) of the Act further states that a tenant who receives a notice to end tenancy under section 49 is entitled to receive one month's rent from the landlord, on or before the effective date of the landlord's notice. This amount may be withheld from the last month's rent by the tenant. The tenant's right to this one month compensation is not affected by a tenant giving notice to move out earlier than effective date of the landlord's notice (section 50(3) of the Act).

In this case, I find the Tenant was served with the Two Month Notice on May 31, 2022. I have reviewed the Two Month Notice and find that it is a valid notice to end tenancy under section 49(3) of the Act. I find that it complies with the form and content requirements of section 52 of the Act. I find the effective date of the Two Month Notice, or July 31, 2022, complies with the requirements of section 49(2) of the Act.

I find the Tenant served the Tenant's Notice on the Landlord by attaching it to the Landlord's door on June 13, 2022, in accordance with section 88(g) of the Act. Pursuant to section 90(c) of the Act, documents attached to a door are deemed to be received on the third day after attachment. Therefore, I find the Landlord is deemed to have received the Tenant's Notice on June 16, 2022.

I find the Tenant moved out of the rental unit on June 24, 2022. The Tenant seeks to recover rent paid from June 25 to 30, 2022.

However, I find the Tenant's Notice did not provide an effective date of June 24, 2022. I find the Tenant's Notice only states that he will vacate "on or before June 30 by 1 pm". While the minimum notice required under section 50(1) of the Act is 10 days, and the Tenant has described the Tenant's Notice as a 10-day notice, I do not find the Tenant's Notice itself to state that it is to be effective in 10 days or by June 24, 2022.

Furthermore, I find that as the Landlord is deemed to be served with the Tenant's Notice on June 16, 2022, the earliest possible effective date of the Tenant's Notice would have been June 26, 2022.

Based on the foregoing, I conclude it is to be inferred that the effective date of the Tenant's Notice for the purpose of section 50(2) of the Act is June 30, 2022, based on what was written on the Tenant's Notice itself. Therefore, I do not find that the Tenant is entitled to a partial refund of rent paid by operation of section 50(2) of the Act. I note that monthly rent is paid monthly and not daily basis unless the parties otherwise agree to pro-rate it. I do not find that the Landlord had agreed to pro-rate the rent if the Tenant moved out by June 24, 2022 instead of by June 30, 2022.

Nevertheless, I find the Tenant is entitled to compensation of one month's rent for having been served with the Two Month Notice, in accordance with section 51(1) of the Act. I find that pursuant to section 50(3) of the Act, Tenant is entitled to this compensation notwithstanding having given the Tenant's Notice.

I find the Landlord did not compensate the Tenant with one month's rent as required. Pursuant to section 67 of the Act, I order the Landlord to pay the Tenant \$919.00 as compensation that the Tenant is entitled to under section 51(1) of the Act.

b. Compensation of 12 Months' Rent

According to section 51(2) of the Act, a landlord who gives a tenant a notice to end tenancy for the landlord's use under section 49 of the Act must pay the tenant 12 times the monthly rent if the landlord does not establish that:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

- the rental unit has been used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

To “occupy” under section 49 of the Act means to occupy for a residential purpose. This means that a landlord can end a tenancy under section 49(3) of the Act if they or their close family member intend in good faith to use the rental unit as their living accommodation or part of their living space.

Based on the evidence presented, I am satisfied on a balance of probabilities that the Landlord has accomplished the stated purpose for ending the tenancy under the Two Month Notice, within a reasonable time and for at least six months after the effective date of the Two Month Notice.

I accept the Landlord’s evidence that she has reclaimed the basement level as part of her main dwelling and that it is used by the Landlord’s family as their living space. I accept the Landlord’s testimony that her children use the living room portion of the basement level as their recreation room and hangout area. I accept that the Landlord’s daughter has also moved into one of the bedrooms downstairs. I accept the Landlord updated the basement level with fresh paint for her family. I find that such uses, including use of the space by the Landlord’s minor children who reside with the Landlord, are consistent with the Landlord’s occupation of the basement level for residential purposes.

In addition, I accept that KB stayed with the Landlord’s family as a homestay student from September 2022 to February 2023, and used one of the bedrooms downstairs. I accept the Landlord’s evidence that she was subsidized for KB’s living expenses and acted as KB’s guardian during this time. I find KB’s stay with the Landlord’s family to be incidental to and consistent with the Landlord’s occupation of the entire dwelling, including the basement level, for a residential purpose. I do not find the Landlord to have re-rented the basement level to another tenant or reconfigured the basement suite and re-rented a portion of it to another tenant since the tenancy ended.

Based on the foregoing, I conclude that the Tenant is not entitled to compensation of 12 months’ rent under section 51(2) of the Act. The Tenant’s claim under this part is dismissed without leave to re-apply.

c. Reimbursement of Shaw TV Charges

I have reviewed the statement from the previous landlord submitted into evidence by the Tenant. However, I do not find this statement to reference Shaw TV or cable at all. I find this statement only states that “utilities” are included in the rent. I am not satisfied that the term “utilities” necessarily includes cable. I am unable to infer, from this statement alone, that the Tenant’s rent had included Shaw TV or cable.

Furthermore, I find it is undisputed that the Tenant had started paying for his own Shaw cable prior to the Landlord becoming the registered owner of the property, and had done so without complaint until well after this tenancy ended.

Accordingly, I am not satisfied on a balance of probabilities that the Tenant has proven that Shaw TV or cable was included in the rent, and that the Tenant is entitled to reimbursement of such expenses from the Landlord. The Tenant’s claim under this part is dismissed without leave to re-apply.

2. Is the Tenant entitled to a return of the security deposit?

Under section 93 of the Act, the obligations of a Landlord under the Act with respect to a security deposit or a pet damage deposit run with the land or reversion. This means that the Landlord inherited the obligations with respect to the Tenant’s security deposit from the previous landlord upon becoming the registered owner of the property, even though the Tenant’s security deposit was given to the previous landlord and not to the Landlord.

As such, I find the Tenant paid a \$425.00 security deposit to the previous landlord, which is considered to be held in trust by the Landlord.

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security deposits at the end of a tenancy.

Based on the evidence presented, I find there was no move-in inspection at the start of the tenancy. I find the Tenant was not offered two opportunities for inspections in accordance with the Act and the regulations by the previous landlord, which the Tenant then failed to participate in. For a tenant’s right to the deposit to be extinguished, the

landlord would have needed to use a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity for inspection. I find the parties did a brief walkthrough at the end of the tenancy, and in any event, there was no notice of final opportunity for a move-out inspection issued. Therefore, I find the Tenant did not extinguish his right to the return of his security deposit under sections 24(1) or 36(1) of the Act. In addition, the Tenant submitted this application on July 20, 2022. I find the Tenant's application was made within one year of the tenancy end date. As such, I find the Tenant's right to the security deposit was also not extinguished under section 39 of the Act.

In contrast, I find the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished under section 24(2) of the Act. I find the previous landlord did not offer the Tenant two opportunities for a move-in inspection, did not complete a move-in condition inspection report with the Tenant, and did not provide the Tenant with a copy of this report in accordance with the Act and the regulations. Extinguishment means that the Landlord could not make an application to claim *against* the security deposit for damage to the rental unit, but could make other claims against the security deposit within the time limit required under the Act, or, after returning the deposit, still make an application to seek compensation for damage to the rental unit.

Under section 38 of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
 - the date the landlord receives the tenant's forwarding address in writing,
- unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

In this case, I find the tenancy ended on June 24, 2022.

I find the Landlord was deemed served with the Tenants' forwarding address in writing on June 16, 2022, the date that the Landlord was deemed to have received the Tenant's Notice.

I find that under section 38(1) of the Act, the Landlord had 15 days from June 24, 2022, or until July 9, 2022, to repay the security deposit to the Tenant or make an application to keep the deposit for a claim other than damage to the rental unit. I find the Tenant did not agree for the Landlord to keep the security deposit. I find there is no evidence of any

previous orders made by the Residential Tenancy Branch regarding compensation owed by the Tenant or authorization for the Landlord to keep the security deposit. I find the Landlord did not return the security deposit in full to the Tenant or make an application by July 9, 2022 as required under section 38(1) of the Act.

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

In addition, Residential Tenancy Policy Guideline 17. Security Deposit and Set off ("Policy Guideline 17") states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit. I find the Tenant did not specifically agree to waive the doubling provisions of the Act.

Based on the foregoing, I conclude that the Tenant is entitled to a return of double the security deposit with interest under section 38 of the Act.

The interest rate on deposits was 0% from 2011 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$3.20 of interest on the security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2011	\$425.00	\$0.00	interest owing (0% rate for 67.11% of year)
2012	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2013	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2014	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2015	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2016	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2017	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2018	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2019	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2020	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2021	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2022	\$425.00	\$0.00	interest owing (0% rate for 100.00% of year)
2023	\$425.00	\$3.20	interest owing (1.95% rate for 38.62% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$853.20 (or $\$425.00 \times 2 + \3.20) for the return of double the security deposit plus interest.

3. Is the Tenant entitled to reimbursement of his 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 total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Compensation of 1 Month's Rent (section 51(1) of the Act)	\$919.00
Return of Double the Security Deposit ($\$425.00 \times 2$)	\$850.00
Interest on Security Deposit	\$3.20
Filing Fee	\$100.00
Total Monetary Order for Tenant	\$1,872.20

Conclusion

The Tenant's claim for compensation is granted in part. The Tenants' claims for return of the security deposit and reimbursement of the filing fee are successful.

Pursuant to sections 38, 67, and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,872.20**. 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: May 21, 2023

Residential Tenancy Branch