



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and evidence submissions on file.

### **Issues**

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenancy began on September 1, 2018 and ended on July 1, 2022. The tenants paid a security deposit of \$975.00 which was carried over from a previous tenancy in 2016. The landlord continues to retain the full security deposit.

The tenants are claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants claim the landlord's right to claim against the security deposit was extinguished as the landlord failed to complete both a move-in and move-out inspection in accordance with the Act.

The tenants provided a forwarding address to the landlord by packing a letter in the landlord's mail slot on August 18, 2022.

The landlord acknowledged receipt of the forwarding address. The landlord also acknowledged not completing move-in and move-out inspection reports.

### Analysis

Section 38(1) of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. As per section 38(6), a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Pursuant to sections 23 and 35 of the Act, the landlord and tenant must together inspect the condition of the rental unit at the beginning and end of the tenancy and the landlord must offer the tenant at least 2 opportunities, as prescribed in the Regulation, for the inspection. The landlord must complete a condition inspection report in accordance with the regulations and 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. The landlord may make the inspection and complete and sign the report without the tenant if the landlord has provided 2 opportunities, as prescribed, and the

tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

Pursuant to sections 24 and 36 of the Act, unless a 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 does not offer two opportunities for an inspection as per section 35 or 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.

Although the landlord filed this application within 15 days of receipt of the forwarding address, there was no dispute that the landlord failed to complete both move-in and move-out inspections. Therefore, as per sections 24 and 36 of the Act the landlord's right to claim against the deposit for damages had been extinguished.

As the landlord's application is solely for damages, the landlord is not permitted to make this claim against the security deposit. As such, the only recourse for the landlord was to return the tenant's security deposit within 15 days of receiving the forwarding address.

I find the landlord's right to claim against the security deposit had been extinguished and the tenants' security deposit was not refunded within fifteen days of the end of the tenancy or the date a forwarding address was provided as required by section 38 of the Act. Therefore, the doubling provisions of section 38 apply.

I allow the tenants' claim for return of the security deposit and award an amount of \$1950.00, which is double the original security deposit of \$975.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2050.00.

The landlord's application for damages to the rental is dismissed with leave to reapply. The landlord is at liberty to make such a claim just not against the tenants' security deposit.

Conclusion

The landlord's application is dismissed with leave to reapply.

Pursuant to section 38 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2050.00. 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: May 30, 2023

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Residential Tenancy Branch