



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

This matter was adjourned to written submissions following a hearing on May 8, 2023 regarding 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 \$1,800.00 pursuant to section 38; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

By an interim decision dated May 8, 2023 (the "Interim Decision"), I adjourned this matter to written submissions with a deadline of May 15, 2023. This decision should be read together with the Interim Decision.

### Preliminary Matter – Service of Dispute Resolution Materials

The parties submitted further documentary evidence and written submissions as per the Interim Decision. The parties also submitted copies of emails sent to each other as proof of service. I find the parties were sufficiently served with each other's evidence and submissions pursuant to section 71(1) of the Act.

### Preliminary Matter – Landlord's Claims

The Landlord submitted evidence regarding claims against the Tenant, including for damage to the rental unit. However, since the Landlord has not made a cross-application, I am unable to address the Landlord's claims in this decision. The Landlord is at liberty to make a separate application within the applicable time limits.

### Issues to be Decided

1. Is the Tenant entitled to the return of the deposits?
2. Is the Tenant entitled to recover the 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 on March 1, 2021. At the start of the tenancy, there was a second tenant, OB. Rent was \$1,800.00 per month. OB paid a \$900.00 security deposit and a \$900.00 pet damage deposit to the Landlord.

The Landlord, the Tenant, and OB attended a move-in inspection on March 1, 2021. A copy of the signed condition inspection report is submitted into evidence.

According to the Tenant, OB moved out of the rental unit in April 2022. The parties agreed that OB still paid \$900.00 to the Landlord as her portion of the rent for May 2022.

The tenancy ended towards the end of May 2022. According to the Landlord, OB gave notice to end the tenancy and the Landlord did not wish to continue the tenancy with the Tenant alone.

The Landlord and the Tenant attended a move-out inspection on May 29, 2022. A copy of the condition inspection report is submitted into evidence. According to the Tenant, the parties had signed off on three items, but the Landlord added additional notes at the bottom of this report. The Landlord submitted the parties agreed to and noted damages to the wall, baseboard, broken door, and missing mail key. The Landlord submitted that the notes at the bottom were for her own use.

On May 31, 2022, the Tenant texted the Landlord that OB will be mailing the mail key to the Landlord.

According to the Tenant, she emailed her forwarding address to the Landlord on June 1, 2022, and sent a form RTB-47 with her forwarding address to the Landlord via registered mail on June 28, 2022. The Tenant submitted a registered mail tracking number into evidence (referenced on the cover page of this decision). Tracking records indicate that this package was delivered on July 6, 2022.

On June 7, 2022, the parties had a telephone call during which it was discussed that the Landlord would return \$600.00 to the Tenant plus \$100.00 for the mail key. The Landlord argues that during this call, the Tenant had agreed to accept \$700.00, and agreed to wait until the mail key was returned to receive the full amount.

According to the Landlord, the Tenant asked if the mail key had arrived on June 20, 2022, to which the Landlord replied that it had not. The Landlord submitted that the Tenant then texted the Landlord as follows:

You mentioned with the (*sic*) after estimates I'd be getting \$700 back but just [waiting] for the key? Will I be able to get that soon? Usually it's 15 days from [move] out

[...]

I'm sorry the mail key is delayed. I will check with [OB] to see if she has any tracking.

Since things have been delayed, I'd like my \$600 deposit sent ASAP. The remaining \$100 can be sent once you receive the mail key.

The Tenant argues that the discussed amount of \$700.00 was conditional on the Landlord providing supporting evidence for deductions, such as quotes or receipts.

On June 21, 2022, the Tenant emailed the Landlord advising that the 15-day deadline had passed, and the Landlord had not provided the Tenant with a copy of the condition inspection report. The Tenant referred to text messages she sent to the Landlord as follows:

You must send me a copy of the condition report. I'm entitled to the pet deposit as no pet damage was ever mentioned or documented until you mentioned it just now. I'm also entitled to request evidence (quotes/receipts) of charges you're

withholding from my damage deposit. Those documents shouldn't be difficult to provide. I need real evidence and not just your account of the work that needs to be done.

We never agreed on an amount that is evident when you wanted to charge me another \$20 for a kitchen sink plug today.

All I've requested from you is fairness and what I'm entitled to as a tenant.

Please feel free to seek advice from the board. If I don't receive \$900, copy of the condition report, and supporting evidence by end of day tomorrow, 6/22, I will file a dispute myself. I will approve the above but it must be in writing.

The Landlord emailed a copy of the move-out condition inspection report to the Tenant on June 22, 2022. The Landlord also sent a \$600.00 e-transfer to the Tenant on the same day. This e-transfer was not accepted by the Tenant and expired on July 22, 2022.

The Landlord submits that she received an empty envelope with no mail key on June 24, 2022. The Tenant argues that the Landlord had tampered with this envelope.

The Landlord submitted an email dated July 13, 2022 from OB, in which OB agreed for the Landlord to keep OB's \$900.00 deposit for damage.

The Landlord submits that her conversations with the Tenant were amicable past the 15-day deadline to file to keep a deposit. The Landlord submits that she felt it was imperative to not deviate from the parties' originally agreed upon settlement.

### Analysis

#### *1. Is the Tenant entitled to the return of the deposits?*

According to Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-tenants:

### **F. SECURITY AND PET DAMAGE DEPOSITS**

A security deposit or a pet damage deposit is paid in respect of a tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the

tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for dispute resolution for return of the deposit.

The landlord may return the deposit(s) plus any applicable interest to any tenant who is named on the tenancy agreement, regardless of who paid the deposit.

In this case, I find both the Tenant and OB had signed the tenancy agreement, and therefore either of them may apply for return of the deposits regardless of who had paid the deposits to 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.

I find neither the Landlord nor the Tenant extinguished their rights to the security and pet damage deposits. I find the parties completed move-in and move-out inspections and signed condition inspection reports which were given to the Tenant. I find the Tenant made this application within one year of the tenancy end date.

For reasons further explained below, I find the Landlord provided the Tenant with a copy of the move-out condition inspection report on June 22, 2022, prior to being served with the Tenant's forwarding address in writing on July 6, 2022. According to section 18 of the regulations, a landlord must provide a move-out condition inspection report to a tenant within 15 days after the later of the inspection date or the date the landlord receives the tenant's forwarding address in writing. As such, I find the Landlord had complied with this deadline.

Based on the foregoing, I find the Landlord's right to the deposits was not extinguished under sections 24(2) or 36(2) of the Act. I also find the Tenant's right to the deposits was not extinguished under sections 24(1), 36(1), or 39 of the Act.

Under section 38 of the Act, a landlord must (a) repay a security or pet damage 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.

Based on the evidence presented, I find this tenancy ended May 31, 2022.

I note the Tenant's evidence that she had served the Landlord with her forwarding address via email on June 1, 2022.

Section 88 of the Act provides the acceptable ways in which documents such as a forwarding address letter may be served on a landlord. These methods include:

- Leaving a copy with the landlord or an agent of the landlord
- Sending a copy by ordinary mail or registered mail to the address at which the landlord resides or carries on business as a landlord
- Leaving a copy at the landlord's address with an adult who apparently resides with the landlord
- Leaving a copy in the landlord's mailbox or attaching to the landlord's door

Email service is only acceptable if the recipient had provided their email address as an address for service in accordance with section 43 of the regulations. I find there is insufficient evidence that the Landlord had agreed to accept service via email or had acknowledged receipt of the Tenant's email on June 1, 2022.

Nevertheless, I accept the Tenant's evidence that she sent her forwarding address in form RTB-47 to the Landlord via registered mail on June 28, 2022, which was delivered on July 6, 2022. Therefore, I find the Landlord was served with the Tenant's forwarding address in writing on July 6, 2022 in accordance with section 88(c) of the Act.

I find that under section 38(1) of the Act, the Landlord had 15 days from July 6, 2022, or until July 21, 2022, to repay the security and pet damage deposits to the Tenant or make an application to keep the deposits, unless the Landlord had a previous order from the Residential Tenancy Branch or had obtained written consent from OB or the Tenant to keep the deposits.

I find OB agreed in writing on July 13, 2022 for the Landlord to keep OB's half of the deposits (\$900.00) for damage, which I find to consist of \$450.00 from the security deposit and \$450.00 from the pet damage deposit. I find the Landlord was entitled to keep this amount under section 38(4)(a) of the Act.

However, I find there is insufficient evidence that the Tenant had agreed in writing for the Landlord to keep the deposits, less \$700.00 to be returned to the Tenant upon the Landlord's receipt of the mail key. I find there is insufficient evidence that the \$700.00 was not conditional on the Tenant's receipt of repair estimates. I find the parties' email and text message exchanges show that the Tenant made multiple requests for estimates and receipts.

I find the Landlord did not return the balance of the deposits (\$900.00) in full to the Tenant or make an application to claim against this amount by July 21, 2022, as required under section 38(1) of the Act. I find the Landlord had attempted to return a partial amount of \$600.00 which was not accepted by the Tenant.

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.

Residential Tenancy Policy Guideline 17. Security Deposits and Set off ("Policy Guideline 17") provides the following sample calculation where the landlord is authorized to retain a portion of the deposit:

**Example C:** A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ( $\$400 - \$100 = \$300 \times 2 = \$600$  less amount actually returned \$250).

Based on the foregoing, I conclude that the Tenant is entitled to a return of double the deposits remaining after OB's authorization ( $\$900.00 \times 2$ ) under section 38 of the Act. I note that even if the Tenant had accepted the \$600.00 from the Landlord, the amount awarded to the Tenant would be  $\$900.00 \times 2 - \$600.00 = \$1,200.00$ , such that the total to be given to the Tenant would still be \$1,800.00.

In addition, section 38(1) of the Act requires that interest on deposits be paid to a tenant. The interest rate on deposits was 0% from 2021 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. However, I accept the Landlord had tried to return \$600.00 to the Tenant in June 2022, before interest would have become applicable. I also find OB had authorized the Landlord to retain her half of the deposits in July 2022, again before interest would have become applicable. Therefore, I only grant interest on \$300.00 of the original deposits, or \$1,800.00 - \$600.00 - \$900.00.

Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$2.63 of interest on this amount (\$300.00) from the date the deposits were paid (February 18, 2021) to the date of this decision, calculated as follows:

2021 \$300.00: \$0.00 interest owing (0% rate for 86.83% of year)  
 2022 \$300.00: \$0.00 interest owing (0% rate for 100.00% of year)  
 2023 \$300.00: \$2.63 interest owing (1.95% rate for 44.92% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$1,802.63 (or \$900.00  $\times$  2 + \$2.63) for the return of double the unauthorized portion of the deposits plus interest.

2. Is the Tenant entitled to recover the filing fee?

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

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

Item	Amount
Return of Double the Balance of the Security and Pet Damage Deposits after Reduction Authorized by OB (\$1,800.00 - \$900.00) $\times$ 2	\$1,800.00
Interest on Deposits	\$2.63
Filing Fee	\$100.00
<b>Total Monetary Order for Tenant</b>	<b>\$1,902.63</b>

### Conclusion

The Tenant's claims for return of the deposits and reimbursement of the filing fee are successful.



Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,902.63**. 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: June 13, 2023

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Residential Tenancy Branch