



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **MNDCL-S, FFL**
Tenant: **MNSDS-DR, FFT**

Introduction

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

1. A Monetary Order for compensation for a monetary loss or other money owed – holding security deposit under sections 38 and 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenant's application under the Act for:

1. An Order for the return of part or all of the security deposit under section 38 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Landlord J.R. attended the hearing for the Landlord.

Tenant D.A. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant D.A. is deemed served with the Proceeding Package, in accordance with section 90 of the Act, on June 15, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord uploaded a copy of the Canada Post customer receipt containing the tracking number to confirm this service. The Tenant confirmed receipt.

I find that Landlord J.R. is deemed served with the Proceeding Package, in accordance with section 90 of the Act, on June 13, 2023, by registered mail in accordance with

section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided the Canada Post tracking number to confirm this service. The Landlord confirmed receipt.

Service of Evidence

The Landlord testified that she served her evidence separately from the Proceeding Package. Specifically, the Landlord stated she served her evidence two weeks before the hearing. The Landlord did not upload proof of service of her evidence. The Tenant confirmed receipt on December 2, 2023. The Landlord's evidence deadline was November 26, 2023.

Residential Tenancy Branch (RTB) Rules of Procedure – Rule #3.14 states:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.
(Emphasis added)

The Landlord's evidence was to be received by the Tenant not less than 14 days before the hearing. Based on the submissions before me, I find that the Landlord's evidence was not served to the Tenant in accordance with section 88 of the Act. I decline to consider the Landlord's evidence.

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 1, 2022. The fixed term ended on April 30, 2023, as did the tenancy. Monthly rent was \$900.00 payable on the first day of each month. A security deposit of \$450.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant's sent his forwarding address to the Landlord by email on May 11, 2023. The Landlord confirmed its receipt.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord applied to keep some or all of Tenant's security deposit on May 25, 2023.

The parties did not do move-in and move-out condition inspections.

The Landlord submitted that the Tenant left his rental unit in a very dirty condition. The Landlord argued that the rental unit must be thoroughly cleaned on departure. The Landlord maintained regardless of the state of the rental unit when the Tenant moved in, the Tenant must clean the rental unit prior to vacating.

The Landlord had cleaners come into the rental unit and clean the unit. The Landlord submits because there were two tenants in the rental unit under separate tenancy agreements, and each should pay half of the cleaning costs. The Landlord seeks \$207.37 from the Tenant to cover his share of the cleaning.

The Tenant described that under the kitchen sink there was mould, and other water damage. The Tenant did not use the lazy susan cupboard in the kitchen to store any of his food products. The Tenant testified that there was a rat entering his bathroom through a hole above his toilet. The rat left droppings on the floor in the bathroom, and the Tenant would close the door at night so the rat did not enter the house. The hole in

the wall was repaired over Christmas, although the repair person left a mess of drywall grit in the bathroom.

The Tenant seeks the return of his security deposit.

Analysis

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

The Landlord stated they did not complete a move-in condition inspection prior to the Tenant moving into the rental unit pursuant to section 23 of the Act. The Landlord also did not organize a move-out condition inspection with the Tenant at the end of the tenancy. I find under sections 24(2) and 36(2) of the Act, the Landlord has extinguished her right to claim against the security deposit for damage to the residential property.

The parties confirmed the following:

- the Tenant provided his forwarding address to the Landlord on May 11, 2023; and,
- the tenancy ended on April 30, 2023.

May 11, 2023 is the relevant date for the purposes of section 38(1) of the Act. The Landlord had 15 days from May 11, 2020 to repay the security deposit in full or file a claim with the RTB against the security deposit. Because the Landlord has extinguished her right to claim against the security deposit, her only option was to return the security deposit to the Tenant. Filing within 15 days is no reprieve.

Given the above, I find the Landlord failed to comply with section 38(1) of the Act in relation to the security deposit. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit, **\$900.00**, to the Tenant under section 38(6) of the Act.

I will now consider the Landlord's compensation claim for damages to the rental unit.

Section 37 of the Act states that a tenant, when vacating a rental unit at the end of a tenancy, must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*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.*” This section must be read in conjunction with section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord testified that the Tenant left the rental unit very dirty when he vacated. The Landlord claims that the Tenant must leave the rental unit in a reasonable state prior to vacating. The parties did not complete a move-in or move-out condition inspection report setting out the state of the rental unit at the start and end of the tenancy.

The Tenant described that the kitchen was not in a clean state when he started his tenancy. He said there was mould under the kitchen sink and other water damage. The Tenant also described that a rat could enter his bathroom through a hole in the wall. The hole in the wall was repaired over the Christmas holidays. The Tenant did not upload any pictures of the state of the rental unit, other than to show that he found rat feces in his rental unit.

Based on the testimonies of the parties, and on a balance of probabilities, I grant the Landlord **\$207.37** compensation to cover the Tenant’s share of the cleaning costs for the rental unit.

As both parties are successful in their claims, I do not grant either party recovery of the application filing fee paid to start their applications. Each party must bear the cost of starting their dispute resolution claims. The Tenant's monetary award is calculated as follows:

Item	Amount
Security deposit doubled to Tenant	\$900.00
Less Landlord's cleaning costs	-\$207.37
Deposit interest*	\$8.33
Total monetary award	\$700.96

* There is no interest owed on the deposit in 2022 as the amount of interest owed in that year was 0%. The amount of interest in 2023 was 1.95%. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled. Interest was calculated using the Residential Tenancies Online Tools: Deposit Interest Calculator.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$700.96. The Landlord must be served with this Order 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 of British Columbia 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 Act.

Dated: December 11, 2023

Residential Tenancy Branch