

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, OLC, FF

Introduction

This hearing was convened in response to applications filed by both the Landlord and tenant. The landlord seeks:

- An order to be allowed to retain all or part of the security deposit. Specifically, the amount of \$422.50 for damage to a mirrored closet door and wall repairs.
- A monetary order to recover the filing fee in the amount of \$50 from the tenant for the cost of this application
- A total monetary claim of \$472.50

The tenant seeks:

- return of all or part of the security deposit, and double this amount as compensation under section 38 of the Residential Tenancy Act (the Act)
- A monetary order to recover the filing fee in the amount of \$50 from the landlord for the cost of this application
- A total monetary claim of \$2550, plus accrued interest on deposit.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me are as follows: The tenancy began on September 1, 2008 and ended on November 30, 2008. The landlord collected a security deposit of \$1250 at the outset of the tenancy. A *start of tenancy* condition inspection was

conducted and an inspection report signed by the parties. Both parties agree that an *end of tenancy* condition inspection was hurriedly and only partially done. Such an inspection report is submitted as having been partially completed (first page only) and is not signed by either party. There was no agreement by the parties as to the inspection results.

On January 9th, 2009 the landlord received and was in possession of the tenant's forwarding address in writing and the tenant's request for the return of the security deposit. The landlord communicated with the tenant on January 20, 2009 that the security deposit was available for return to the tenant on the following conditions:

- the landlord was claiming to retain part of the security deposit in the amount of \$422.50 for damage to a mirrored closet door and wall repairs, and
- that the balance of \$827.50 was payable and available to the tenant, and
- for the tenant to communicate back to the landlord their agreement with the landlord's claim and retention of their claim from the security deposit.

As the tenant did not agree or respond, the landlord determined to retain the entire security deposit and applied for dispute resolution within 15 days, to retain a portion of it. The tenant disputes the landlord's results of the move out inspection and questions responsibility for the broken mirror door, saying it was already broken at the outset of the tenancy. The landlord pointed out the *start of tenancy* inspection report identifies the subject closet door as not deficient or 'G' - for Good. The tenant agrees the hole in the wall the landlord claims necessitated repairs was not there at the outset of the tenancy. In summary, the tenant does not deny the closet mirror door was broken at the end of the tenancy, and that the wall required repairs at the end of the tenancy. The landlord provided photographs of the damages and a receipt for charges to the landlord for the repairs of the damages in the amount of \$422.50

Analysis

In respect to the landlord's claim against the security deposit:

I find the tenant has not supported his submission that the tenancy did not incur the damages, for which the landlord is claiming repair costs. I prefer the landlord's submission showing the subject broken closet door and subject wall were not acknowledged by either party as being damaged at the outset of the tenancy.

Therefore, I find the landlord is entitled to retain, from the security deposit, the amount

of \$422.50 claimed in their application for dispute resolution. As the landlord is successful in his application claim, I grant the landlord full recovery of the filing fee of \$50 paid for the application, for a total entitlement claim of **\$472.50**.

In respect to the tenant's claim of double the security deposit:

Section 38(1) of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

The landlord only partially complied with the requirements of section 38. The landlord communicated to the tenant their claim to only a portion of the security deposit, which the landlord properly made application to retain, by filing for dispute resolution.

However, instead of the landlord withholding the amount of their claim and forwarding the balance of the security deposit to the tenant, the landlord withheld the entire security deposit. The landlord failed to repay the amount of \$827.50 within 15 days of receiving the tenant's forwarding address in writing; and, is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, as to the tenant's monetary claim: the landlord currently still holds the entire security deposit in the amount of \$1250, plus accrued interest on this amount for the period of September 1, 2008 to March 26, 2009.

The landlord was obligated under Section 38 to return the balance of the security deposit amount of \$827.50 (the portion to which the landlord did not make a claim) within 15 days after receiving the tenant's forwarding address in writing. I find the tenant was not provided with the return of this amount within 15 days after receiving the tenant's forwarding address in writing; thus, I find the tenant has established a claim for compensation under Section 38 of the Act for double this amount of **\$827.50**. I also find that the tenant, having been partially successful in his application, is entitled to partial recovery of the filing fee in the amount of **\$25**.

The tenant's total entitlement claim from the landlord is calculated as follows:

Original security deposit currently held by Landlord	1250.00
Interest to tenant on original security deposit for September 1, 2008 – March 26, 2009	6.25
Landlord's total entitlement claim from tenant inclusive of filing fee	- 472.50
Portion of security deposit Doubled as per Section 38 of the Act	827.50
Recovery of Filing fee from landlord	25.00
Amount owed to tenant by the landlord	1636.25

Conclusion

I grant the tenant an order under section 67 for the sum of **\$1636.25**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 26, 2009