



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

On June 14, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) requesting the return of his security deposit, compensation for losses due to the tenancy, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenant and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlord testified that they received each others documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to compensation under the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The testimony of both parties was that the tenancy began on December 31, 2017, as a four-month fixed term. Rent for the entire fixed term was paid in advance in the amount of \$3,800.00, at a rate of \$950.00 per month. The Tenant also paid the Landlord a \$950.00 security deposit (the deposit) at the outset of this tenancy. The parties also agreed that the Tenant moved out of the rental unit in February 2018 and that she had found a subtenant to take over her tenancy.

The Tenant testified that the subtenant paid the rent to her directly for the month of March 2018. The Tenant also testified that the subtenant had wanted to stay in the rental unit for April 2018 as well, but that the Landlord would not allow them to stay. The Tenant provided a letter from the subtenant into documentary evidence. The Tenant is requesting to recover her pre-paid rent for April 2018.

The Landlord testified that he had allowed the subtenant for March 2018, but he had not allowed the subtenant to stay in the rental unit for April 2018 as he had wanted to find a more suitable tenant. The Landlord testified that he was unable to find a Tenant for April 2018.

The Tenant testified that she sent a registered mail letter to the Landlord, containing her forwarding address and requesting the return of her deposit and the pre-paid rent for April, on May 10, 2018. The Tenant is also requesting the return of her security deposit.

The Landlord testified that he received the Tenant's forwarding address but that he did not return the deposit or the pre-paid rent to the Tenant, nor had he file a claim against the deposit. The Landlord testified that he did not return the security deposit to the Tenant as the Tenant did not attend the move-out inspection. When asked the Landlord testified that he had offered one time to the Tenant for the inspection and since she had already moved out he did not make a second attempt to schedule the move-out inspection with the Tenant.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended in accordance with the *Act* on April 30, 2018. Section 35 of the *Act* states the following:

#### **Condition inspection: end of tenancy**

**35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit,  
or
- (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) 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.

It is the responsibility of the Landlord to ensure that the move-out inspection is completed. In this case, I find that the Landlord was in breach of section 35 of the *Act* by not providing the Tenant with at least 2 opportunities to participate in the move-out inspection.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

### **Return of security deposit and pet damage deposit**

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

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on April 30, 2018, the date indicated in the fixed term tenancy agreement. I find that the Landlord received the Tenant's forwarding address on May 16, 2018. Accordingly, the Landlord had until May 31, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenant or submitting

an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

**Return of security deposit and pet damage deposit**

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that she is entitled to the return of double the security deposit, in the amount of \$1,900.00.

Additionally, I find that the Tenant pre-paid her rent for the entire fix-term of her tenancy, for the months of January, February, March and April 2018. I also find the Tenant moved out of the rental unit in February 2018 and that the Landlord had approved, the Tenant subletting the rental unit, and that the subtenant would pay the Tenant their rent, and that this arrangement would allow the Tenant to recover her prepaid rent for this tenancy.

I find that the Landlord breached the *Act* when he removed the subtenant from the rental unit for the month of April 2018, without providing pursuant to section 44 of the *Act*.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

In this case, I find that the Landlord’s breach of the *Act* resulted in a loss to the Tenant and that the Landlord was unjustly enriched due to his breach. Therefore, I find that the Tenant has established an entitlement for the recovery of her pre-paid rent for April 2018, in the amount of \$950.00

Pursuant to sections 38 and 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$2,850.00. The Order is comprised of \$950.00 for the return of the Tenant’s prepaid rent for April 2018 and \$1900.00 for the return of double the Tenant’s security deposit.

As the Tenant has been successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$2,950.00**. The Tenant is provided with this Order in

the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: September 17, 2018

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Residential Tenancy Branch