# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDL-S, FFL, MNRT, MNSD, FFT

Introduction

This hearing dealt with applications from both the landlords and Tenant CS (the tenant) under the *Residential Tenancy Act* (the *Act*). The landlords identified both tenants in their application for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant applied for the following against Landlord CH (the landlord) as the Respondent in their application:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed that this tenancy ended on July 25, 2019, when vacant possession of the rental unit was surrendered to the landlords.

Preliminary Matters - Service of Applications for Dispute Resolution

Landlord SH gave sworn testimony supported by written evidence that they sent a copy of their dispute resolution hearing package to the tenants at the address of the rental unit on July 26, 2019. Landlord SH testified that the tenant told them before this tenancy ended that the tenant was retaining Canada Post's mail forwarding service to ensure that mail sent to the tenant at the address of the rental unit would be forwarded to them at their new mailing address. Landlord SJ entered into written evidence a copy of the Canada Post Customer Receipt and Tracking Number to confirm this one registered mailing. Landlord SH testified that their dispute resolution hearing package was returned to them as unclaimed by Canada Post.

The tenant gave undisputed sworn testimony that they never received the landlords' dispute resolution hearing package nor was this package forwarded to them by Canada Post. They gave undisputed sworn testimony that when they checked with Canada Post, they discovered that Canada Post does not forward registered mail to those using the mail forwarding service that the tenant had retained.

The tenant testified that they sent the landlord a copy of their dispute resolution hearing package by registered mail on August 10, 2019. The landlords testified that they never received any notification of the tenant's dispute and had not received their dispute resolution hearing package. The tenant did not have the Canada Post Tracking Number to confirm their registered mailing of their package to the landlord. Although I offered to give the tenant some time to obtain this number, the tenant said that this would not be possible during the time frame of this hearing. The tenant also testified that they provided their forwarding address in writing in a separate letter contained within the dispute resolution hearing package and evidence they sent to the landlord for this hearing.

Preliminary Issues- Analysis of Service of Documents

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

> *(a) by leaving a copy with the person;*
> *(b) if the person is a landlord, by leaving a copy with an agent of the landlord;*

*(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
*(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
*(e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Section 15 of Residential Tenancy Guideline 12 on Service Provisions reads in part as follows:

*...Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report...*

In this case, I find that there were problems with respect to the evidence provided by both parties regarding their service of their dispute resolution hearing packages to the other party. Neither party knew what the other party was claiming, prior to commencing this hearing.

Rather than the landlords sending two separate copies of their dispute resolution hearing packages to the tenants in separate registered mailings, the landlords only provided written evidence to demonstrate that a single registered mailing was sent. As the landlords did not complete the name or address where they sent the registered mail package, it is unclear who was identified as the addressee in the single dispute resolution hearing package they did send. Although they provided the Canada Post Tracking Number and Customer Receipt, they sent this package to an address where the landlords knew the tenants were no longer residing. The tenant gave undisputed sworn testimony that they did not receive notification of the landlords' dispute resolution hearing package and that they subsequently learned that it was not sent to them by Canada Post. Under these circumstances, I dismiss the landlord's application for a monetary award for damage to the rental unit with leave to reapply, as I am not satisfied that the landlords have demonstrated service of their package to the tenants in accordance with section 89(1) of the *Act*.

The landlords gave sworn testimony that they were similarly unaware of the tenant's application as they had not received the tenant's dispute resolution hearing package

sent by registered mail. The tenant did not have the Canada Post Tracking Number to rebut their testimony. Under these circumstances, I find that the tenant has failed to demonstrate service of their dispute resolution hearing package to the landlord. As such, I find that the tenant has provided insufficient details to confirm that their dispute resolution hearing package was served to the landlord in accordance with section 89(1) of the *Act*. For this reason, I dismiss the tenant's application with leave to reapply.

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. As both parties were present, but neither had received copies of nor were they were aware of the applications from the other party, I attempted to clarify if there existed any possibility of resolving at least some of the issues that the parties had raised in their respective applications. While the parties were unwilling to consider settling their disputes, I was able to obtain sufficient information through their undisputed sworn testimony and written evidence to establish that parts of their applications could be addressed through the issuance of findings and orders.

Issues

Should any order be issued with respect to the security deposit for this tenancy?

Background and Evidence - Overcharging of Security Deposit

The parties agreed that this tenancy began when they signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on April 14, 2018. When the initial term expired on May 1, 2009, the tenancy continued until July 25, 2019 as a month-to-month tenancy. Monthly rent at the beginning of this tenancy was set at $1,000.00, payable in advance on the first of the month. Although the *Act* only permits security deposits equivalent to one-half of one month's rent, the landlords charged the tenant $1,000.00 as a security deposit, $500.00 more than the *Act* allows.

Analysis - Overcharging of Security Deposit

On the basis of this undisputed evidence, the landlords would be responsible for returning the amount of their overcharge, plus applicable interest, to the tenants immediately.

Background and Evidence - Extinguishment of Rights to Retain Security Deposit

At the hearing, I confirmed the tenant's claim that the landlords did not conduct a joint move-in inspection of the rental unit, nor did the landlords create and provide the tenants with a copy of a report of any joint move-in condition inspection that may have been conducted.

Initially, Landlord SH asserted that a joint move-in condition inspection was completed at the beginning of this tenancy. They declared that a copy of the report of that inspection was outlined in page 2 of the Agreement entered into written evidence by the landlords.

At the hearing, I reviewed page 2 of the Agreement with the parties, and noted that this page was the breakdown of who was responsible for the various services during this tenancy, and in no way constituted a room-by-room report of an inspection of the rental unit at the start of this tenancy. At that point, Landlord SH confirmed that no report of a joint move-in condition inspection was created at the beginning of this tenancy.

Analysis - Extinguishment of Rights to Retain Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

> ***23*** *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day...*
>
> *(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(4) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(5) 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.*
>
> *(6) The landlord must make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (3), and*

*(b) the tenant does not participate on either occasion...*

Section 24(2) of the *Act* reads in part as follows:

**Consequences for tenant and landlord if report requirements not met**

***24*** *(2) The right of a landlord to claim against a security deposit... for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 23 (3)* [2 opportunities for inspection]*,*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Sections 35 and 36 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord regarding that inspection. Although it is of no consequence based on the testimony with respect to the joint move-in inspection, the tenant asserted that no move-out inspection or report were undertaken, as well.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposits had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the deposits.

In this case, I am not satisfied that the tenant has demonstrated that they have provided their forwarding address to the landlords in writing, separate from their application for dispute resolution. Including a letter requesting return of their security deposit within a package containing their application for dispute resolution and written evidence for this hearing, even if the tenant could prove that it was sent, does not meet the requirement of providing the landlords with a separate written notice of their forwarding address. At any rate, as the tenant could not rebut the landlords' claim that they did not receive the dispute resolution hearing package or the tenant's current mailing address, I am not

satisfied that the landlords have been provided with the tenant's forwarding address in writing for the purpose of obtaining a return of their security deposit.

This tenancy has ended and the landlords were given the current forwarding address where the security deposit for this tenancy could be returned at this hearing. I have included that address on the first page of this decision. Under these circumstances, I find that the landlords do not have any statutory authority to retain any portion of the security deposit for this tenancy, including the illegal $500.00 they have overcharged the tenants since April 2008. The landlords' right to claim against the security deposit was extinguished in April 2008, when the landlords failed to comply with sections 23 and 24 of the *Act.* As such, and in accordance with sections 24, 38 and 62 of the *Act*, I order the landlords to return the tenants' $1,000.00, plus applicable interest, to the tenant on the address cited during this hearing and as appears at the beginning of this decision within 15 days of this decision (i.e., December 6, 2019). Applicable interest during this time period is $12.01.

Although I dismiss the tenant's application with leave to reapply, the landlord has until December 6, 2019 to return the $1,012.01 amount owed the tenants for their security deposit. In the event that the landlords do not return this amount to the tenant by that date, the tenant(s)are at liberty to reapply pursuant to section 38(6) of the *Act* for a monetary award equivalent to **double** the value of the security deposit charged to the tenants when this tenancy began.

In closing, I should also alert the parties to the following provisions of section 32 of the *Act*, which define emergency repairs and outline the process whereby claims for such repairs may be made:

> ***33*** *(1)In this section,* ***"emergency repairs"*** *means repairs that are*
>
> (a)*urgent,*
>
> (b)*necessary for the health or safety of anyone or for the preservation or use of residential property, and*
>
> (c)*made for the purpose of repairing*
>
> (i)*major leaks in pipes or the roof,*
>
> (ii)*damaged or blocked water or sewer pipes or plumbing fixtures,*
>
> (iii)*the primary heating system,*
>
> (iv)*damaged or defective locks that give access to a rental unit,*

(v)*the electrical systems, or*

(vi)*in prescribed circumstances, a rental unit or residential property...*

(3)*A tenant may have emergency repairs made only when all of the following conditions are met:*

(a)*emergency repairs are needed;*

(b)*the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*

(c)*following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

(4)*A landlord may take over completion of an emergency repair at any time.*

(5)*A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant*

(a)*claims reimbursement for those amounts from the landlord, and*

(b)*gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed...*

Conclusion

I dismiss both applications for monetary awards with leave to reapply.

I order the landlords to return the security deposit charged by the landlords for this tenancy plus applicable interest totalling $1,012.01 to the tenant at the address identified above and provided by the tenant at this hearing within 15 days of today's date.

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: November 21, 2019

Residential Tenancy Branch