



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      **MNRL-S MNDCL-S FFL**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for unpaid rent owed by the Tenant pursuant to section 67;
- an order for compensation for monetary loss or other money owed by the Tenant to the Landlord pursuant to section 67;
- authorization to keep the Tenant’s security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 67.

The Tenant did not attend this hearing. The hearing was scheduled for 1:30 pm. I left the teleconference hearing connection open until 2:42 when the hearing ended in order to enable the Tenant to call into this teleconference hearing. An agent (“BN”) for the Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that BN and I were the only ones who had called into this teleconference.

Preliminary Matter – Service of NDRP and Landlord's Evidence on Tenant

BN stated the Landlord served the NDRP and its evidence (collectively the "NDRP Package") on the Tenant by registered mail on July 22, 2022. BN submitted into evidence a Canada Post receipt dated July 22, 2022 and the tracking number for the package.

BN stated the Tenant made an application for dispute resolution ("Previous Application") to the Residential Tenancy Branch ("RTB") in which she sought the return of the security and pet damage deposits. In the decision of the adjudicator who considered the Previous Application, the adjudicator stated:

The tenant states they left a forwarding address on the counter when they vacated the rental unit. However, I find the tenant has not submitted a copy of this forwarding address. There is also no evidence or documentation demonstrating that the landlord received this version of the forwarding address.

For these reasons, I find I cannot consider the forwarding address left on the counter of the rental unit.

The tenant has also provided a copy of a forwarding address form, indicating they sent it to the landlord by registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the forwarding address form was served on June 22, 2022 and is considered to have been received by the landlord on June 27, 2022, five days after its registered mailing.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposits or make an application for dispute resolution claiming against the deposits.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was July 12, 2022.

I find that the tenant applied for dispute resolution on June 24, 2022, before the landlord's fifteen days to comply with the provisions of section 38(1) of the *Act*.

BN stated the Tenant was still living at the forwarding address provided by Tenant that was served on the Landlord on June 22, 2022. BN stated the Tenant again served another notice with her forwarding address to the Landlord on March 15, 2023. Based on BN's undisputed testimony, I find the Tenant was served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the *Act*. Pursuant to section 90 of the *Act*. I find the Tenant was deemed to have received the NDRP Package on March 20, 2023.

BN stated the Landlord did not receive any evidence from the Tenant for these proceedings.

### Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent owed by the Tenant?
- an order for compensation for monetary loss or other money owed by the Tenant to the Landlord?
- to keep the Tenant's security and pet damage deposits?
- recover the filing fee for the Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

BN submitted into evidence a tenancy agreement, dated October 12, 2021, between the former manager for the Landlord and the Tenant. The tenancy agreement stated the tenancy commenced on November 1, 2021, for a fixed term ending October 31, 2022, with rent of \$1,300.00 payable on the 31<sup>st</sup> day of each month. The Tenant was required to pay a security deposit of \$650.00 and a pet damage deposit of \$300.00 by November 1, 2021. BN stated the security and pet damage deposits were paid by the Tenant and that the Landlord was holding the deposits in trust for the Tenant. BN stated the Tenant gave the Landlord a written notice to end tenancy and she vacated the rental unit on April 30, 2022. Based on the undisputed testimony of BN, I find there was a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

BN submitted into evidence copies of a move-in inspection report that was signed by the Tenant on February 1, 2022 and a move-out inspection report dated April 30, 2022. The move-out inspection was not signed by the Tenant but stated the Tenant was unavailable for the move-out inspection.

BN stated the Tenant vacated the rental unit six months before the end of the fixed term of the tenancy and the Landlord was seeking unpaid rent of \$7,800.00 for the months of May through October 2022 inclusive at \$1,300.00 per month.

BN stated the rental unit was re-rented on November 1, 2022. BN was unable to provide any explanation for why it took six months before the rental unit was rented to a new tenant. The Landlord did not submit any evidence the Tenant damaged the rental unit that required extensive repairs to be undertaken nor did the Landlord provide any copies of advertising materials to show the Landlord attempted to rent the rental unit commencing after the Tenant gave her notice to vacate the rental unit.

### Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure (“RoP”) states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

- 37(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement *must do whatever is reasonable to minimize the damage or loss.*

[emphasis in italics added]

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

*Residential Tenancy Branch Policy Guideline 16* ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

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. In order 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlord's testimony and evidence regarding the damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 and 35 of the Act.

Sections 23, 24, 35, 36, 38(1), 36(6) and 38 of the Act state:

- 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.*
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - (b) a previous inspection was not completed under subsection (1).
- (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.
- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
  - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, 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.
- 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.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
  - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
  - (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
  - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
  - (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

- (b) having complied with section 35 (2), does not participate on either occasion, or
  - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 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.*
- [...]
- (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.

[emphasis in italics added]

The move-in inspection report was signed by the Tenant but the move-out inspection was not signed by the Tenant. BN did not provide any evidence on whether the Landlord scheduled a move-out inspection with the Tenant. As such, I find the Landlord has not demonstrated the move-out inspection was scheduled with the Tenant as required by section 35(2) of the Act. Section 36(2) of the Act provides the Landlord's right to claim against the security and pet damage



deposits is extinguished for damages to the residential property. However, in the present case the Landlord is seeking unpaid rent. As such, the Landlord's right to claim against the deposits for compensation other than for damages to the rental unit is not extinguished.

In the Previous Decision, the adjudicator found the Tenant served the Landlord with her forwarding address by registered mail on June 22, 2022 and, pursuant to section 90 of the Act, it was considered to have been received by the Landlord on June 27, 2022, being five days after it was posted. Pursuant to section 38(1) of the Act, the Landlord had 15 days, or July 12, 2022, to either return the deposits to the Tenant in full or, alternatively, make the Application. The records of the RTB indicate the Landlord made the Application on July 5, 2022. As such, the Landlord made the Application within the 15-day period permitted by section 38(1) of the Act.

BN stated the Tenant vacated the rental unit six months before the end of the fixed term of the tenancy. BN stated the rental unit was re-rented on November 1, 2022. BN was unable to provide any explanation for why it took six months before the rental unit was rented to a new tenant. The Landlord did not submit any evidence the Tenant damaged the rental unit that required extensive repairs to be undertaken nor did the Landlord provide any copies of advertising materials to show the Landlord attempted to rent the rental unit commencing after the Tenant gave her notice to vacate the rental unit one month prior to her vacating the unit on April 30, 2022.

I find the Landlord has not provided any testimony or evidence that it took any steps to acted reasonably to minimize that damage or loss as required by section 37(2) of the Act. As such, I find the Landlord has not proven, on a balance of probabilities, that it is entitled to recover any compensation from the Tenant for breaching the tenancy agreement by ending it prior to the end of the fixed term. Based on the foregoing I dismiss the Application. Pursuant to section 67 of the act, I order the Landlord to return the security and pet damage deposits, totaling \$950.00, to the Tenant.

As I have dismissed the Application, the Landlord is not entitled to recover the filing fee for the Application.

Conclusion

I order the Landlord to pay the Tenant \$950.00.

The Tenant must serve the Monetary Order on the Landlord 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 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: April 22, 2023

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Residential Tenancy Branch