

## **DECISION**

### **Introduction**

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This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the "Act"), and dealt with the tenants' Application for Dispute Resolution (Application) for:

- a Monetary Order for the return of all or a portion of their security deposit pursuant to sections 38 and 67 of the Act (\$1,625.00)
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that each landlord was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. The applicants provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm this service. Based on the written submissions of the tenants and in accordance with section 90 of the Act:

- I find that Landlord M.D. was served on October 6, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 11, 2022, the fifth day after the registered mailing.
- I find that Landlord A.D. was served on October 6, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 11, 2022, the fifth day after the registered mailing.

### **Issue(s) to be decided**

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Are the tenants entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$1,625.00)

Are the tenants entitled to recover the filing fee for this application from the landlord? (\$100.00)

## Background and Evidence

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

The tenants submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenants on August 31, 2020, indicating a monthly rent of \$1,625.00 and a security deposit of \$812.50, for a tenancy commencing on September 13, 2020;
- A copy of a notice to vacate which was signed by the tenants on December 18, 2021, indicating the tenancy would end as of December 31, 2021, and providing a forwarding address for the tenants;
- A copy of a Proof of Service Tenant Forwarding Address for Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlords by FedEx on December 20, 2021;
- A copy of a letter from the landlords dated December 23, 2021, in response to the tenants' notice to vacate;
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on December 31, 2021.

## Analysis

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### **Are the tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?**

Section 38(4) allows a landlord to retain from a security and/or pet damage if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act stipulates that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$812.50, as per the tenancy agreement.

I accept the following declarations made by the tenants on the Tenant's Direct Request Worksheet:

- The tenants have not provided consent for the landlords to keep all or part of the deposit;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the Act.

Section 71(2)(c) of the Act enables me to make an order that a document not served in accordance with section 88 or 89 of the Act is sufficiently given or served for purposes of this Act.

I find that the tenants sent their forwarding address to the landlords by FedEx, which is not a method of service permitted under section 88 of the Act. However, I am satisfied that the landlords received the tenants' forwarding address on the day the landlords responded to the tenants forwarding address and notice letter.

For this reason, and in accordance with section 71(2)(c) of the Act, I find that the landlords have been served with the forwarding address on December 23, 2021.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on December 31, 2021.

I accept the evidence before me that the landlords have failed to return the deposit to the tenants and have not filed an Application for Dispute Resolution requesting to retain the deposit by January 15, 2022, within the fifteen days granted under section 38(1) of the Act.

Based on the foregoing, I find that the landlords must pay the tenants double the amount of the security deposit in accordance sections 38(6) of the Act.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$1,625.00, the amount claimed by the tenants for double the security deposit.

**Are the tenants entitled to recover the filing fee for this application from the landlord?**

As the tenants were successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application, pursuant to section 72 of the Act.

## **Conclusion**

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I grant the tenants a Monetary Order in the amount of **\$1,725.00** for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with **this Order** in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: November 9, 2022

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Residential Tenancy Branch