



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1295401 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- return of the Tenants' security deposit and/or pet damage deposit in the amount of \$1,450.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenants attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

No one attended on behalf of the Landlord for this hearing. I left the teleconference hearing connection open until 2:02 pm in order to enable the Landlord's representative to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenants and I were the only ones who had called into the hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenants confirmed that their notice of dispute resolution proceeding package (the "NDRP Package") and their documentary evidence was sent to the Landlord via registered mail on July 15, 2022. The Tenants submitted receipts and tracking numbers in support. The Tenants explained that they sent three packages, one to the registered

and records office of the Landlord, and one to each of the Landlord's two directors, AG and DVD. The Tenants submitted a company search of the Landlord into evidence. Tracking records from Canada Post indicate that each of the three packages were delivered (see top two and bottom left of four tracking numbers referenced on the cover page of this decision). The package sent to the Landlord's registered and records office was delivered on July 20, 2022 (see top left tracking number). I find the Landlord was served with the Tenants' NDRP Package and documentary evidence in accordance with sections 88 and 89 of the Act.

Having found the Landlord to be duly served with notice of this hearing, I directed this hearing to proceed.

Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to reimbursement of the filing fee?

Background and Evidence

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

This tenancy commenced on August 1, 2021 and ended on April 30, 2022. Rent was \$2,700.00 per month. The Tenants paid a security deposit of \$1,350.00.

According to the Tenants, they had signed a tenancy agreement but were not given a copy. The Tenants confirmed that the tenancy agreement was signed by DR on behalf of the Landlord. DR was the Landlord's property manager at the time. The Tenants stated that they paid monthly rent via e-transfer (see email address on cover page of decision).

The parties did not attend move-in or move-out inspections together and did not complete any condition inspection reports.

The Tenants confirmed that they sent a copy of their forwarding address letter dated May 13, 2022 (the "Forwarding Address Letter") to the Landlord's registered and

records office via registered mail on May 13, 2022. The Tenants submitted the registered mail tracking number into evidence (see bottom right of four tracking numbers referenced on the cover page of this decision). The Tenants confirmed that this package was not picked up by the Landlord. Tracking records indicate that this package was returned to the sender as unclaimed. The Tenants stated that on May 17, 2022, they emailed a copy of the Forwarding Address Letter to an email used by DVD and DVD's partner, CF (see cover page of decision). The Tenants explained that they communicated with DVD and CF via this email during the tenancy. The Tenants submitted the parties' email correspondence and a copy of the Forwarding Address Letter into evidence. The email records show that the Tenants received a reply on May 17, 2022, which states that DVD is "not on the contract" and "copies to lawyer".

The Tenants stated that they later received a call from AG, who apparently did not know that DVD was renting out the rental unit and collecting rent from the Tenants.

Analysis

1. Are the Tenants entitled to the return of the security deposit?

According to sections 38(1), (3), and (4) of the Act, a landlord must repay a security deposit to the tenant with interest or make an application for dispute resolution claiming against the deposit within 15 days after the later of the tenancy end date or the date the landlord receives the tenant's forwarding address in writing, unless the landlord has the tenant's written consent or a previous order from the Residential Tenancy Branch.

In this case, I find the tenancy ended on April 30, 2022.

Based on the Tenants' undisputed testimony and evidence, I find the Tenants served the Landlord with the Forwarding Address Letter via registered mail on May 13, 2022, in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Forwarding Address Letter on May 18, 2022, the fifth day after mailing. I note this registered mail package was not picked up by the Landlord. However, as stated in Residential Tenancy Policy Guideline 12. Service Provisions, where a document served by Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. I find there is insufficient evidence to suggest that the deeming provisions should be rebutted in the circumstances. Furthermore, I find the Tenants sent a copy of the Forwarding Address

Letter to Landlord via email on May 17, 2022, and received a reply the same day. I accept the Tenants' evidence that this email address was used for communication with the Landlord's representatives DVD and CF during the tenancy. Therefore, I would also be prepared to find that the Landlord was sufficiently served with the Tenants' forwarding address in writing by May 18, 2022, pursuant to section 71(2)(b) of the Act.

Pursuant to section 38(1) of the Act, I find the Landlord had until June 2, 2022, or fifteen days after being served with the Tenants' forwarding address in writing, to return the security deposit to the Tenants in full or make an application for dispute resolution to claim against the deposit. I find the Tenants did not agree for the Landlord to keep the security deposit. I find there are no previous orders made by the Residential Tenancy Branch regarding any compensation owed to the Landlord by the Tenants or authorization for the Landlord to keep the security deposit. I find the Landlord did not return the security deposit in full to the Tenants or make an application by June 2, 2022 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the security deposit.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find the Tenants were not provided with two opportunities by the Landlord for move-in or move-out inspections in accordance with the Act and the regulations. For reference, section 17 of the regulations requires that the second or final opportunity for inspection be given to a tenant using the approved (Residential Tenancy Branch) form. I find there is insufficient evidence to suggest that the Landlord had complied with such requirements so that the Tenants' right to the security deposit would have been extinguished due to non-attendance of a move-in or move-out inspection. Furthermore, I find the Landlord was deemed served with the Tenants' forwarding address in writing by May 18, 2022, which was within one year after the tenancy ended. Therefore, I conclude the Tenants' right to the return of the security deposit was not extinguished under any of sections 24(1), 36(1), or 39 of the Act.

Policy Guideline 17 further states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the

hearing, the arbitrator will order the return of double the deposit. I find the Tenants did not specifically waive the doubling provisions of the Act.

I conclude the Tenants are entitled to a return of double the security deposit under sections 38(1) and 38(6) of the Act.

In addition, section 38(1) of the Act requires that interest on the security deposit be paid to a tenant. The interest rate on deposits was 0% from 2021 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original security deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenants are entitled to \$6.85 of interest on the security deposit from the beginning of the tenancy to the date of this decision, calculated as follows:

2021 \$1350.00: \$0.00 interest owing (0% rate for 41.91% of year)
 2022 \$1350.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2023 \$1350.00: \$6.85 interest owing (1.95% rate for 26.02% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenants \$2,706.85 (or $\$1,350.00 \times 2 + \6.85) for the return of double the security deposit plus interest.

2. Are the Tenants entitled to reimbursement of the filing fee?

The Tenants have been successful in this application. I award the Tenants reimbursement of the filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenants is calculated as follows:

Item	Amount
Return of Double the Security Deposit ($\$1,350.00 \times 2$)	\$2,700.00
Interest on Security Deposit	\$6.85
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$2,806.85

Conclusion

The Tenants' claims for return of the security deposit and reimbursement of the filing fee are successful.

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **\$2,806.85**. This Order may be served on the Landlord, 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 05, 2023

Residential Tenancy Branch