

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant K.S. and Tenant B.S. (the Tenants) attended the hearing for the Tenants.

No person attended the hearing for the Landlord.

Service

This Direct Request Proceeding originally convened on January 12, 2024 and was adjourned to a participatory hearing in an Interim Decision dated January 12, 2024. The Interim Decision made the following service directives:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the Landlord within three (3) days of receiving this decision in accordance with section 89 of the Act.

The Tenant testified that the Landlord was served with the above documents via registered mail on January 14, 2024. The Tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that the Landlord was deemed served on January 19, 2024, by registered mail in accordance with section 89(1) and 90 of the Act.

Preliminary Matters

The address of the rental property in the Tenants' Application for Dispute Resolution is missing one digit that is found in the address of the rental property in the Tenancy Agreement. In the hearing the Tenants agreed to amend their Application for Dispute

Resolution to add the missing digit. In accordance with section 64 of the Act, I so amend.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the Tenants, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on November 1, 2022, with a monthly rent of \$2,179.00, due on first day of the month, with a security deposit in the amount of \$1,189.50 and a pet damage deposit in the amount of \$1,089.50 (the Deposits).

The Tenants testified that they provided the Landlord with their Deposits on August 11, 2022. The Tenants entered into evidence a screenshot of the Tenants' banking transaction history which shows that on August 11, 2022 the Tenants sent the Landlord \$2,279.00 with the notation "apartment deposit".

The Tenants testified that they completed a move in condition inspection and report with the Landlord on October 25, 2022. The move in condition inspection report was entered into evidence.

The Tenants testified that they completed a move out condition inspection and report with the Landlord on November 27, 2023. The Tenants testified that they provided the Landlord with their forwarding address on the move out condition inspection report. The move out condition inspection report showing same was entered into evidence.

The Tenants testified that they moved out of the subject rental property on November 27, 2023; however, they paid rent until November 30, 2023.

The Tenants testified that they did not provide the Landlord with permission to keep any portion of their security or pet damage deposits. Landlord B.S. testified that they received a cheque from the Landlord on January 10th or 11th, 2024 in the amount of \$2,319.73. The Tenants testified that the security and pet damage deposits were returned in full with interest. The Tenants testified that they are seeking double their Deposits as they were not returned in the required time period.

Analysis

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Based on the Tenants' testimony and the move out condition inspection report entered into evidence I find that the Tenants provided the Landlord with their forwarding address on November 27, 2023.

I accept the Tenants undisputed testimony that they did not receive the return of the their Deposits until January 10, 2024 at the earliest.

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit 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 states 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 and/or pet damage deposit or make an application for dispute resolution claiming against the security deposit.

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

I find that there is no evidence provided to show that the Landlord had the Tenant's agreement in writing to keep the security and/or pet damage deposit or that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address to retain a portion of the pet damage deposit as required under section 38(1).

I find that on or about January 10, 2024 the Tenants received the return of their Deposits in full plus \$40.73 in interest.

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the security and/or pet damage deposit as they have not complied with section 38(1) of the Act. I find that the Tenants are entitled to damages as per the below calculations:

$\$2,279.00$ (the Deposits) * 2 (doubling provision) = $\$4,558.00$ - $\$2,279.00$
(portion of the Deposits returned to the Tenants) = **$\$2,279.00$**

As of January 10, 2024, I find that the interest accrued on the Deposits totalled \$48.38. I find that the Landlord paid the Tenants \$40.73 in interest and therefore owe the Tenants an additional **\$7.65** in interest.

As per my above findings, the Tenants are entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act, in the amount of **\$2,286.65**.

The Landlord may still file an application for lost revenue and damages; however, the issue of the security and/or pet damage deposit has now been conclusively dealt with in this hearing.

Is the Tenant 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 under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2,386.65** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act	\$2,286.65
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$2,386.65

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 Act.

Dated: February 5, 2024

Residential Tenancy Branch