



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LICAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of the security deposit and compensation under Section 38(6) of the Act. The application is inclusive of application for recovery of the filing fee.

The tenant and 2 of the landlord's representatives attended the hearing. The landlord acknowledged receipt of the tenant's application and exchange of the tenant's evidence. The landlord acknowledged they had not submitted any document evidence to this matter. The parties were provided opportunity to present any relevant evidence in testimony and fully participate in the conference call hearing. The parties were also provided opportunity to discuss their dispute with a view to settling all matters to no avail. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed in respect to their security deposit and the filing fee?

Background and Evidence

The undisputed *relevant* evidence of the parties before me is as follows.

The tenancy began November 01, 2016 and since ended February 27, 2018. The landlord collected a security deposit of \$600.00 at the outset of the tenancy, of which

the landlord returned \$244.82 and retained the balance of \$355.18. At the end of the tenancy the parties conducted a move out mutual condition inspection in accordance with the Act on February 27, 2018. The inspection was recorded by the landlord and of which I have benefit of a copy. The evidence provided is that the parties agreed at the end of the tenancy that the landlord could retain \$110.00 of the security deposit and return the balance of \$490.00. The evidence further indicates that at the time of the condition inspection the tenant provided their forwarding address. On March 21, 2018 the tenant received a cheque from the landlord in the amount of \$244.82 identified as the tenant's security deposit residual, dated March 13, 2018. The landlord testified they sent the cheque by mail within 15 days.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of the *relevant* evidence for this matter, I find as follows.

Section 38(1) of the Act provides as follows (**emphasis added**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do **one of the following**:

38(1)(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;

38(1)(d) **file an application** for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the parties agreed to administration of the security deposit at the end of the tenancy; specifically that the landlord would retain \$110.00 and return \$490.00. The parties did not agree to additional deductions. I find that even if I were to accept that the landlord mailed the cheque for \$244.82 on March 13, 2018, **Section 90** of the Act deems the cheque received (repaid) on March 18, 2018, if mailed.

In this matter I find the landlord failed to repay the security deposit as was agreed, or repay any amount within 15 days of receiving the tenant's forwarding address in writing on February 27, 2018, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. Therefore, the landlord is liable under **Section 38(6)** which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds \$245.18 of the security deposit of \$490.00. The landlord was obligated under Section 38 to return this amount or make application claiming against the security deposit of which the landlord did neither. The amount which is *doubled* pursuant to Section 38(6)(b) is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1200.00 from which I deduct the \$110.00 as agreed by the parties as owed the landlord, and further deduct the \$244.82 received by the tenant.

As the tenant was successful in their application they are entitled to recovery of the \$100.00 filing.

Calculation for Monetary Order

Double security deposit – Section 38	\$1200.00
Filing Fees for the cost of this application	100.00
<i>Less amount agreed owed to landlord.</i>	<i>-110.00</i>

<i>Less amount already received from landlord</i>	<i>-244.82</i>
monetary award tenant	\$945.18

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$945.18**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: October 15, 2018

Residential Tenancy Branch