



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEDMAN ESTATES INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on November 28, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by R.W. and M.A., agents. The Tenant, R.W. and M.A. provided affirmed testimony.

The Tenant testified that Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. On behalf of the Landlord, M.A. testified the Tenant was served with the Landlord's documentary evidence by registered mail. The Tenant acknowledged receipt. During the hearing, neither party raised any issue with respect to service or receipt of these documents. The parties were in attendance or were represented at the hearing, and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant's claims are set out on a Monetary Order Worksheet, dated November 30, 2018. The Tenant seeks \$387.00 for the return of the security deposit and \$70.00 for the return of deposits paid for building access fobs. It is evident that the Tenant intended to apply for the return of the fob deposits that were not part of the security deposit. Therefore, pursuant to section 64(3) of the *Act*, I amend the Application to include the Tenant's claim for a monetary order for money owed or compensation for damage or loss.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began in or about February 2008, and ended on October 31, 2018, by mutual agreement. Although the parties were unsure about the amount of rent due, they agreed that roughly \$800.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$387.00, which the Landlord holds.

First, the Tenant claimed \$387.00 for the return of the security deposit. He testified that he provided the Landlord with his forwarding address in writing, which was placed in a "drop box". A copy of the letter dated October 30, 2010, was submitted into evidence.

In reply, R.W. acknowledged the letter containing the Tenant's forwarding address was received on November 1, 2018. Further, R.W. acknowledged that the security deposit has been held on account of the condition of the rental unit.

Second, the Tenant claimed \$70.00 for two deposits paid with respect to access fobs, which he testified were also left in the drop box.

In reply, R.W. acknowledged the fobs were received but stated that the amount of the deposits held is \$60.00, not \$70.00. The Tenant acknowledged he did not have documentation to support his claim and was prepared to agree with R.W. In addition, R.W. stated that one of the fobs did not work because it did not have a battery; however, M.A. testified the fob did not work even after the battery was replaced.

Further, R.W. testified the Tenant was asked to participate in a move-out condition inspection but avoided doing so. I was not referred to any documentation in support of the Landlord's attempts to schedule a move-out condition inspection, or to a copy of a move-in condition inspection.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenant's claim for the return of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to double the amount of the deposits held. The language in the *Act* is mandatory.

In this case, I find the Tenant provided his forwarding address to the Landlord in the letter dated October 30, 2017. R.W. acknowledged receipt of the letter on November 1, 2018. Therefore, I find the Landlord had until November 16, 2018, to repay the security deposit to the Tenant or to make a claim against it by filing an application for dispute resolution. R.W. confirmed the security deposit was not repaid to the Tenant, and I find there is insufficient evidence before me to conclude the Landlord has made an application for dispute resolution.

As the parties were advised during the hearing, the condition of the rental unit at the end of a tenancy is not a relevant consideration upon hearing an application for the return of a security deposit. A landlord who experiences losses caused by a tenant during the tenancy is at liberty to apply for dispute resolution and claim losses incurred as a result of the tenancy. In this case, it appears the Landlord has not yet done so.

Pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to receive double the amount of the security deposit held, or \$774.00.

With respect to the Tenant's claim for the return of the deposits for the access fobs, I find it is more likely than not that the total amount of the deposits is \$60.00. The parties agreed this amount is held by the Landlord even though the fobs were returned. The evidence provided by the Landlord's agents with respect to the condition of the fobs is contradictory. R.W. testified that one fob did not work until the battery was replaced. M.A. testified the fob did not work even after the battery was replaced.

In this case, I find the Tenant is entitled to the return of the deposits totalling \$60.00 for the fobs. First, I find there is insufficient evidence that the fobs do not function as intended. The evidence of the Landlord's agents was contradictory in that regard. Second, The tenancy lasted for more than 11 years. It is reasonable to expect that small electronic devices will stop working through reasonable wear and tear. Finally, I note the Landlord has been at liberty to apply for any losses arising from the tenancy and has elected not to do so. In light of the above, I find the Tennant is entitled to recover \$60.00 for the return of the access fob deposits held. This amount has not been doubled because they do not form part of the security deposit.

Finally, having been successful, I find the Tenant is entitled to recover the \$100.00 filing fee paid to make the Application. Therefore, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$934.00, which has been calculated as follows:

Claim	Allowed
Security deposit (doubled):	\$774.00
Fob deposits:	\$60.00
Filing fee:	\$100.00
TOTAL:	\$934.00

Conclusion

The Tenant is granted a monetary order in the amount of \$934.00. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: March 22, 2019

Residential Tenancy Branch