



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WELBEC QUESNEL LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNSD, MNDCT, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security and pet deposit pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to

make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to Decide

Are the tenants entitled to a portion or all their security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to an order to have the landlord return their personal property?

Are the tenants entitled to a monetary order as compensation for damage or loss?

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

Background and Evidence

AJ gave the following testimony on behalf of the tenants. This tenancy began on November 1, 2019 and ended on April 3, 2021. Monthly rent was set at \$600.00. AJ submits that a pet deposit of \$870.00 and a security deposit of \$300.00 was paid, which the landlord still holds. The landlord has not returned any portion of the deposits to the tenants.

Both parties confirmed that the first and only time the tenants provided their forwarding address was when they served the landlord the Notice of Hearing package and Application for this hearing.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

Both parties confirmed that the first and only time the tenants provided their forwarding address was when they served the landlord the Notice of Hearing package and Application. I informed the landlord that he had 15 days from the date of the hearing, until August 24, 2021, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant's application is dismissed with leave to reapply.

The tenant's forwarding address was confirmed during the hearing, and the landlord was informed that he had 15 days from the date of the hearing, until August 24, 2021 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

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: August 09, 2021

Residential Tenancy Branch