



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$2,350.00 for damages for the Landlord, retaining the security deposit to apply to the claim.

The Tenants appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The Landlord was provided with a copy of the Notice of a Dispute Resolution Hearing on January 26, 2022; however, the Landlord did not attend the teleconference hearing scheduled for August 29, 2022, at 1:30 p.m. (Pacific Time). The phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Respondent Tenants, who indicated that they were ready to proceed.

Rule 7.1 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Tenants and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 1:30 p.m. on August 29, 2022, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 13 minutes; however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Landlord's Application without leave to reapply.**

The Landlord submitted a copy of the Parties' tenancy agreement, which states that the Tenants paid the Landlord a security deposit of \$1,100.00 for this tenancy. The Tenants advised that they vacated the residential property on October 28, 2021, and that the Landlord sold the property, which sale closed on November 4, 2021. The Tenants said

they provided the Landlord with their forwarding address in writing on November 1, 2021.

Section 38(1) of the Act states the following:

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the Tenants' \$1,100.00 security deposit within fifteen days after November 1, 2021, namely by November 16, 2021, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38 (1). The Landlord has provided no evidence that he returned any amount of the security deposit. The Landlord applied to the RTB for dispute resolution, claiming against the security deposit on January 17, 2022; however, this was over two months late pursuant to section 38 of the Act. Accordingly, I find the Landlord failed to comply with his obligations under section 38 (1).

Since the Landlord has failed to comply with the requirements of section 38 (1), and pursuant to section 38 (6) (b) of the Act, I find the Landlord must pay the Tenants double the amount of the security deposit. There is no interest payable on the security deposit. As a result, I **award** the Tenants with **\$2,200.00** from the Landlord in this matter, pursuant to sections 38 and 67 of the Act.

I grant the Tenants a **\$2,200.00** Monetary Order from the Landlord pursuant to section 67 of the Act. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Tenants may cancel any claims they have made to the RTB against the Landlord

for the return of the security deposit.

The Landlord's Application is dismissed without leave to reapply.

Conclusion

The Landlord's Application is dismissed without leave to reapply, as neither the Landlord, nor an Agent acting for him attended the hearing to present the merits of the Application. The Respondent Tenants did attend the hearing.

The Landlord failed to return the Tenants' \$1,100.00 security deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and receiving the Tenants' forwarding address. As such, the Landlord is Ordered to pay the Tenants double the security deposit pursuant to section 38 (6) of the Act.

I grant the Tenants a **Monetary Order** from the Landlord of **\$2,200.00**. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision will be emailed to the Parties' addresses provided by the Landlord in the Application, and confirmed by the Tenants in the hearing.

This Decision is final and binding on the Parties, except as otherwise provided under the Act, and 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 29, 2022

Residential Tenancy Branch