

## **DECISION**

### **Introduction**

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This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the "Act"), and dealt with the tenants' Application for Dispute Resolution (Application) for:

- a Monetary Order for the return of all or a portion of their security deposit pursuant to sections 38 and 67 of the Act (\$1,425.00)
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the landlord was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 89 of the Act. Based on the written submissions of the tenant and in accordance with section 90 of the Act:

- I find that Landlord R.C. was served on September 28, 2022, by registered mail, the fifth day after the registered mailing. The applicants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing. I find the Notice of Dispute Resolution Proceeding – Direct Request is deemed have been received by the landlord on October 3, 2022, the fifth day after its registered mailing.

### **Issue(s) to be decided**

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Are the tenants entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$1,425.00)

Are the tenants entitled to recover the filing fee for this application from the landlord? (\$100.00)

## Background and Evidence

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I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenants submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,850.00 and a security deposit of \$1,425.00, for a tenancy commencing on December 15, 2020;
- A copy of a notice to vacate which was signed by the tenants on June 14, 2022, indicating the tenancy would end as of July 15, 2022, and providing a forwarding address for the return of the deposit
- A copy of a Proof of Service Tenant's Forwarding Address for Return of security deposit and/or pet damage deposit form which indicates that the forwarding address was sent to the landlord by registered mail at 9:56 am on June 14, 2022;
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was sent to the landlord on June 14, 2022;
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on July 15, 2022.

## Analysis

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### **Are the tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?**

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

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

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$1,425.00, as per the tenancy agreement.

I accept the following declarations made by the tenants on the Tenant's Direct Request Worksheet:

- The tenants have not provided consent for the landlord to keep all or part of the deposit
- There are no outstanding Monetary Orders against the tenants for this tenancy
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the Act

In accordance with sections 88 and 90 of the Act, I find that the forwarding address was served on June 14, 2022 and is considered to have been received by the landlord on June 19, 2022, five days after its registered mailing.

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on July 15, 2022.

I accept the evidence before me that the landlord has failed to return the deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposit by July 30, 2022, within the fifteen days granted under section 38(1) of the Act.

Based on the foregoing, I find that the landlord must pay the tenants double the amount of the security deposit in accordance sections 38(6) of the Act.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$2,850.00, double the amount claimed by the tenants for the security deposit.

**Are the tenants 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.

## **Conclusion**

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Pursuant to sections 67 and 72 of the Act, I grant the tenants a Monetary Order in the amount of **\$2,950.00** for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with **this Order** in the above terms and the landlord must be served with this Order as soon as possible. Should the

landlord 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 Residential Tenancy Act.

Dated: October 31, 2022

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Residential Tenancy Branch