



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

In this application for dispute resolution, the tenants applied on February 7, 2022 for:

- an order for the return of the security deposit; and
- recovery of the filing fee.

The hearing was attended by the tenants' agent ("the tenant") but not the landlord. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified she served the Notice of Dispute Resolution Proceeding and evidence on the landlord by registered mail to the landlord's residence on March 29, 2022, and provided a tracking number as noted on the cover page of this decision. I find the tenant served her materials on the landlord in accordance with section 89 of the Act and deem them received by the landlord on April 3, 2022, pursuant to section 90.

Preliminary Matter

The application listed the same address for the rental unit and the landlord. As the tenant confirmed that the rental unit was a basement unit separate from the landlord's, with its own kitchen and bathroom, I found the matter fell within the jurisdiction of the Residential Tenancy Branch.

Issues to be Decided

- 1) Are the tenants entitled to a monetary order for the return of the security deposit?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

The tenant provided the following particulars regarding the tenancy. It began October 21, 2020 and ended on November 1, 2021; rent was \$1,550.00, due on the first of the month, and the tenants paid a security deposit of \$775.00, which the landlord still holds.

A copy of the tenancy agreement was submitted as evidence, and indicates the security deposit was \$775.00. Also submitted as evidence is a screenshot of two e-transfers to the landlord, dated November 3, 2020, totalling \$2,325.00, which the tenant stated was for rent and the security deposit. ($\$1,550.00 + \$775.00 = \$2,325.00$)

The tenant testified they are seeking to recover only \$500.00 of the security deposit, having authorized the landlord to retain \$275.00.

The tenant testified no move-in inspection was completed at the beginning of the tenancy, no move-out inspection was done at the end of the tenancy, the tenants vacated the rental unit on November 1, 2021, and the tenants' forwarding address was provided to the landlord by email on December 6, 2021, and again by registered mail on February 15, 2022. A copy of the email is submitted as evidence.

An email thread submitted as evidence shows that the landlord stated there was damage to a door, and that on December 23, 2021 the tenants agreed to the landlord retaining \$275.00 of the security deposit.

Analysis

Section 38(1) states:

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.

Section 38(4)(a) of the Act states that a landlord may keep an amount of the security deposit if at the end of the tenancy the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

The tenant has submitted as evidence an email string in which the landlord stated the tenants damaged the unit, and the tenants stated that they agreed to the landlord retaining \$275.00 of the security deposit.

Section 38(5) states that the right of a landlord to retain all or part of a security deposit or pet damage deposit under section 38(4)(a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36(2) *[landlord failure to meet end of tenancy condition report requirements]*.

As the tenant has provided undisputed affirmed testimony that a move-in inspection was not completed at the beginning of the tenancy, I find that pursuant to section 38(5) the landlord's right to claim \$275.00 for damage against the tenants' security deposit has been extinguished.

Section 38(6) states:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant has provided affirmed testimony and documentary evidence that they served the landlord with their forwarding address in writing on December 6, 2021 by email. I deem the tenants' forwarding address received by the landlord on December 9, pursuant to section 44 of the regulation.

As the landlord has not repaid or made a claim against the security deposit within 15 days of receiving the tenants' forwarding address in writing, I find the landlord is required to pay the tenant double the amount of the \$775.00 security deposit: \$1,550.00.

This finding is supported by [Policy Guideline](#) 17: *Security Deposit and Set Off*, which states at part C:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit ...if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act ...

4. In determining the amount of the deposit that will be doubled, the following are **excluded** from the calculation:

...

- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing **for other than damage to the rental unit** ...
- if the landlord's right to deduct from the security deposit for damage to the rental unit has **not** been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

[emphasis added]

As the amount the tenants agreed the landlord could retain is for damage, and the landlord obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement was extinguished under the Act, the amount the tenants permitted the landlord to retain was not excluded from the doubling of the \$775.00 security deposit.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

The tenants are entitled to a monetary order in the amount of \$1,650.00, comprising \$1,550.00 for the doubled security deposit and \$100.00 for the filing fee.

Conclusion

The tenants are granted a monetary order for \$1,650.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: November 08, 2022

Residential Tenancy Branch