

## **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 tenant's 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 (\$1,000.00)
- 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 tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) was served in accordance with section 89 of the Act. The applicant provided a copy of the Canada Post receipt containing the tracking number to confirm this service. Based on the written submissions of the tenant:

- I find that Landlord J.S. was served on October 1, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 6, 2022, the fifth day after the registered mailing.

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

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Is the tenant entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$1,000.00)

Is the tenant 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 tenant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 11, 2020, indicating a monthly rent of \$2,000.00 and a security deposit of \$1,000.00, for a tenancy commencing on March 1, 2020;
- A copy of an e-mail from the tenant to the landlord dated April 4, 2022, providing the tenant's forwarding address and requesting the return of the deposit;
- A copy of a reply e-mail from the landlord dated April 25, 2022;
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant and indicating the tenancy ended on February 28, 2022.

## Analysis

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### **Is the tenant 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 and/or pet damage deposit or make an application for dispute resolution claiming against the security deposit and/or the pet damage deposit.

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

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$1,000.00, as per the tenancy agreement.

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

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

I accept the tenant's statement on the Tenant's Direct Request Worksheet that the tenancy ended on February 28, 2022.

Section 71(2)(c) of the Act enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

I find that the tenant sent their forwarding address to the landlord by e-mail, which is not a method of service permitted under section 88 of the Act. However, I am satisfied that the landlord received the tenants' forwarding address on the day the landlord replied to the tenants' e-mail.

For this reason, and in accordance with section 71(2)(c) of the Act, I find that the landlord has been served with the forwarding address on April 25, 2022.

I accept the evidence before me that the landlord has failed to return the deposit to the tenant and has not filed an Application for Dispute Resolution requesting to retain the deposit by May 10, 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 tenant double the amount of the security deposit in accordance sections 38(6) of the Act.

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$2,000.00, double the amount claimed by the tenant for the security deposit.

**Is the tenant entitled to recover the filing fee for this application from the landlord?**

As the tenant was successful in their application, I find that the tenant is 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 tenant a Monetary Order in the amount of **\$2,100.00** for the return of double the security deposit and for the recovery of the filing fee for this application. The tenant is 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: November 3, 2022

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Residential Tenancy Branch