

DECISION

Introduction

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 and/or pet damage deposit pursuant to sections 38 and 67 of the Act (\$2,660.00)
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act (\$100.00)

Preliminary Matters

I note that the spelling of Landlord D.Z.'s name on the Application for Dispute Resolution is slightly different than the spelling of Landlord D.Z.'s name shown on the tenancy agreement. Section 64(3)(c) of the Act allows me to amend the application to reflect both versions of Landlord D.Z.'s name, which I have done.

Service of Notice of Dispute Resolution Proceeding - Direct Request

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that each landlord was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in person. The tenants had the landlords and a witness sign the Proof of Service Tenant's Notice of Direct Request Proceeding forms to confirm this service.

Based on the written submissions of the tenants and in accordance with section 89 of the Act:

- I find that Landlord D.Z. was duly served the Proceeding Package on November 12, 2022, in person.
- I find that Landlord T.Z. was duly served the Proceeding Package on November 12, 2022, in person.

Issue(s) to be decided

Are the tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit? (\$2,660.00)

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

Background and Evidence

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 D.Z. on March 25, 2022 and the tenants on March 28, 2022, indicating a monthly rent of \$1,330.00, a security deposit of \$665.00, and a pet damage deposit of \$665.00, for a tenancy commencing on April 22, 2022;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was sent to the landlords by text message at 6:39 pm on October 2, 2022;
- A copy of a text message from the tenants to the landlords dated October 2, 2022, providing the tenants' forwarding address;
- A copy of a reply text from the landlords also dated October 2, 2022;
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenants vacated the rental unit on September 21, 2022.

Analysis

Are the tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Section 38(4) of the Act 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).

Section 12(1)(b) of the *Residential Tenancy Regulation* establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Landlord T.Z. has not signed the tenancy agreement, which is a requirement of the Direct Request process.

For this reason, I will only proceed with the portion of the tenants’ application naming Landlord D.Z. as a respondent.

I find that the tenants paid a security deposit in the amount of \$665.00 and a pet damage deposit in the amount of \$665.00, 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 deposits;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the Act.

Based on the tenants’ statement on the Tenant’s Direct Request Worksheet, I find the tenancy ended on September 21, 2022, the day the tenants vacated the rental unit.

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 tenants sent their forwarding address to Landlord D.Z. by text message, which is not a method of service permitted under section 88 of the Act. However, I am satisfied that Landlord D.Z. received the tenants’ forwarding address on the day Landlord D.Z. replied to the tenants’ text message.

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

I accept the evidence before me that Landlord D.Z. has failed to return the deposits to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposits by October 17, 2022, within the fifteen days granted under section 38(1) of the Act.

Based on the foregoing, I find that Landlord D.Z. must pay the tenants double the amount of the security deposit and the pet damage deposit in accordance section 38(6) of the Act.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$2,660.00, the amount claimed by the tenants for double the security deposit and the pet damage deposit.

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

As the tenants were partially successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the tenants a Monetary Order in the amount of **\$2,760.00** for the return of double the security deposit and the pet damage deposit and for the recovery of the filing fee for this application. The tenants are provided with **this Order** in the above terms and Landlord D.Z. must be served with this Order as soon as possible. Should Landlord D.Z. 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.

I dismiss the portion of the tenants' application for a Monetary Order naming Landlord T.Z. as a respondent without leave to reapply.

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: December 19, 2022

Residential Tenancy Branch