



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on November 2, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent T.C. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?

2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$985.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$450.00. The tenancy ended on September 30, 2022.

The Tenant testified that he served the Landlord with his forwarding address in writing on September 30, 2022. The Landlord's Agent confirmed receipt on September 30, 2022. The Tenant stated that he received a cheque dated October 13, 2022 in the amount of \$324.65. The Tenant stated that he did not consent to the Landlord retaining any amount of the Tenant's security or pet damage deposit.

The Landlord's Agent stated that the Landlord retained \$115.50 to repair a damaged kitchen wall, and a further \$9.85 for materials. The Landlord's Agent confirmed the Landlord retained a total of \$125.35, and that the remaining balance of \$324.65 was returned to the Tenant by sending the Tenant a cheque dated October 13, 2022. The Landlord's Agent stated that the Tenant's pet deposit in the amount of \$450.00 was returned to the Tenant by mailing a cheque dated October 15, 2022.

The Tenant stated he received his pet deposit on November 7, 2022. The Tenant stated as of November 2, 2022 the Landlord had not yet send the Tenant their pet deposit, despite the cheque being dated October 15, 2022. The Tenant referred to an email dated November 2, 2022 in which one of the Landlord's Agents states;

"Hey, Krystal talked to the owner and they found your pet deposit and will be processing it and sending it out."

The Landlord's Agent stated that they could not confirm what date the cheque containing the Tenants pet damage deposit was returned to the Tenant as this was dealt with by a different department.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

I accept that the parties agreed that the tenancy ended on September 30, 2022. I accept that the Landlord's Agent confirmed that the Landlord received the Tenant's forwarding address in writing on September 30, 2022. I accept that the Tenant did not consent to the Landlord retaining any portion of their \$450.00 security deposit and \$450.00 pet damage deposit.

As there is no evidence before me that that the Landlord was entitled to retain all or a portion of the security deposit and pet deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until October 15, 2022 to repay the security deposit in the amount of \$450.00 and the pet deposit in the amount of \$450.00 to the Tenant, or make an application for dispute resolution if the Landlord felt entitled to retaining this portion.

I accept that Landlord returned \$324.65 of the Tenant's \$450.00 security deposit on October 13, 2022. I find that the Landlord complied with Section 38(1) on this portion of the security deposit.

While the Landlord felt entitled to retaining the remaining \$125.35 portion of the Tenant's security deposit, it would have been important for the Landlord to submit an application for dispute resolution seeking compensation for this amount. As the Landlord did not submit an application, I find that the Landlord is in breach of Section 38 of the *Act*, therefore, is required to pay the Tenant double ($\$125.35 \times 2$) = **\$250.70** pursuant to Section 38(6).

With respect to the return of the Tenant's pet deposit, I accept that the Tenant had received a cheque dated October 15, 2022 in the amount of \$450.00. I find that the

Tenant has provided sufficient evidence to demonstrate that despite the cheque being dated October 15, 2022, as of November 2, 2022 the Landlord had not yet returned the Tenant's pet damage deposit, which was made apparent in the Landlord's Agent's email to the Tenant dated November 2, 2022 stating; "*the owner found the deposit and will be processing it and send out the deposit*". As this is beyond the October 15, 2022 deadline, I find that the Tenant is entitled to double the return of their pet damage deposit ($\$450.00 \times 2$) = \$900.00, less the amount already returned to the Tenant ($\$900.00 - \450.00) = **\$450.00**.

Having been successful, I also find the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$800.70.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$800.70. The order may be filed in and enforced as an order of the Provincial Court of BC (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: January 10, 2023

Residential Tenancy Branch