



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord FO and tenants LB and CB appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order for return of the security deposit?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on December 1, 2016 and was on a month-to-month basis. Rent was \$2,150.00 per month. The landlord still holds \$113.00 of the tenants' security deposit having returned \$737.00 to the tenants on November 25, 2022. The tenants vacated the rental unit on October 31, 2022.

The tenants provided the landlord with their forwarding address in a letter dated September 30, 2022. The letter was delivered personally to the landlord and was produced in evidence.

The landlord testified that he retained \$113.00 of the tenants' security deposit for utilities for the month of October, 2022. The landlord stated that the utilities are billed by the city in three-month time periods. He did not know at the time he retained that portion of the security deposit exactly how much the utilities would be for October 2022 as the billing period ran from October 2022 to December 2022. However, he based the amount on the previous billing period which ran from July 2022 to September 2022.

The landlord stated that he returned the remainder of the security deposit on November 25, 2022 because he had to wait to determine whether the tenants would pay their previous utilities bill. At the time the tenants vacated the rental unit the utilities bill for July through September 2022 remained unpaid by the tenants. On November 15, 2022 he learned that the tenants had paid the outstanding utilities bill and he then returned \$737.00 of the tenants' security deposit, retaining \$113.00 for the October 2022 utilities.

The tenants stated the July through September 2022 utilities bill was not due until November 15, 2022 and they paid it on the due date. They did not agree to allow the landlord to retain any portion of their damage deposit and have not seen the October through December utilities bill, so they are unsure whether they owed \$113.00. The tenants are claiming \$963.00 in compensation. They believe that they should receive double the amount of the security deposit which they argue should have been returned in full on November 15, 2022, less the \$737.00 already returned by the landlord.

Analysis

Section 38 of the Act requires the landlord to return the security and pet deposits or file an application for dispute resolution within 15 days of receiving the tenants' forwarding address. If the landlord fails to either return the deposits or file an application for dispute resolution within 15 days, the Act stipulates that the landlord must return double the amount of the security and pet deposits to the tenants.

While the landlord was in a difficult situation with respect to the payment of the July through September 2022 utilities that were outstanding, he was required under the Act to return the entire deposit or file a dispute application. There is no dispute that the entire deposit was not returned by November 15, 2022, and therefore the tenants are

entitled to the return of double the security deposit, less the amount already returned by the landlord.

I grant the tenants' application and they are entitled to return of double their security deposit, less the amount previously returned by the landlord. RTB Policy Guideline 17 states in part:

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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

The landlord has not filed a claim against the security deposit. As the tenants are successful in their application, they are entitled to recover the filing fee for the application.

Conclusion

The tenants are granted a monetary order as follows:

Claim	Amount
Security deposit (double)	\$1,700.00
Amount previously returned	(\$737.00)
Filing Fee	\$100.00
Total	\$1,063.00

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: March 12, 2023