



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenants attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants testified that they were not recording this dispute resolution hearing.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on June 30, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenants referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five

days after mailing them, on July 5, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants testified that this tenancy began as a fixed term tenancy on December 1, 2020. The fixed term was to end on November 30, 2021; however, the tenancy ended early by a mutual agreement to end on August 15, 2021. Monthly rent was \$2,500.00 payable on the first day of each month. A security deposit of \$2,500.00 and a pet damage deposit of \$300.00 were collected at the start of the tenancy. The Landlord returned \$1,250.00 on August 13, 2021 to correct the overpayment of the security deposit.

The Tenants did not do a move-in condition inspection of the rental unit because the Landlord did not arrange one. The Tenants did do a move-out condition inspection with the Landlord. The Tenants provided their forwarding address by registered mail on March 7, 2022.

The Tenants testified that the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Tenants stated they did agree in writing, on the move-out condition inspection report at the end of the tenancy, that the Landlord could keep \$200.00 of the security deposit.

The Landlord did not apply to the RTB to keep the remaining portion of the security deposit or the pet damage deposit.

The Tenants seek double their security deposit and the pet damage deposit and the return of their application filing fee.

Analysis

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I accept the undisputed testimony of the Tenants and based on this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended on August 15, 2021.
- The Tenants' forwarding address was sent to the Landlord in writing by Canada Post registered mail on March 7, 2022, and the Landlord is deemed to have received this on March 12, 2022.

March 12, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from March 12, 2022 to repay the security deposit and pet damage deposit in full or file a claim with the RTB against the deposits.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of March 12, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

38 ...

- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) *the director has previously ordered the tenant to pay to the landlord, and*
 - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...*

The Landlord did not conduct a move-in condition inspection with the Tenants. The Landlord completed a move-out condition inspection with the Tenants on August 15, 2021. The Tenants did not extinguish their rights in relation to the security deposit and the pet damage deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenants did agree in writing at the end of the tenancy that the Landlord could keep \$200.00 of the Tenants' security deposit to pay a liability or obligation of the Tenants. Section 38(4) of the Act does apply.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and pet damage deposit and only Section 38(4) of the Act is an allowable exception. Therefore, the Landlord is not permitted to claim against the security deposit and the pet damage deposit and must return double the security deposit and the pet damage deposit to the Tenants pursuant to Section 38(6) of the Act.

Interest is calculated on the original security deposit and pet damage deposit amounts, before any deductions are made, and it is not doubled. The Residential Tenancy Branch Deposit Interest Calculator was used to determine the interest amounts.

As the Tenants were successful in their application, I award the Tenants reimbursement of the \$100.00 application filing fee pursuant to Section 72(1) of the Act.

The Landlord must return the total amount below to the Tenants.

Items	Deposits doubled	Amount
Security deposit (SD)	$\$1,250.00 - \$200.00 = \$1,050.00 \times 2$	\$2,100.00
Plus, SD interest		\$4.14
Pet damage deposit (PDD)	$\$300.00 \times 2$	\$600.00
Plus, PPD interest		\$0.99
Plus, application filing fee		\$100.00
TOTAL:		\$2,805.13

In total, the Tenants are entitled to \$2,805.13 and I issue the Tenants a Monetary Order against the Landlord for this amount.

For the benefit of the Tenants, they may wish to discuss with an Information Officer at the RTB the options available to them for any remaining matters. An Information Officer can be reached at:

5021 Kingsway
 Burnaby, BC
 Phone: 604-660-1020 (Lower Mainland)
 250-387-1602 (Victoria)
 1-800-665-8779
 Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenants are issued a Monetary Order for \$2,805.13. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the

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 Act.

Dated: March 02, 2023

Residential Tenancy Branch