



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD-DR FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for January 24, 2023.

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

- compensation for the failure of the landlord to return the tenant's security deposit pursuant to section 38, and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

KC represented the landlord in this hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the Act, I find the landlord duly served with the tenant's Application and evidence. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to monetary compensation for the landlord's failure to comply with the Act?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

On April 17, 2020, both parties agreed to enter into a fixed-term tenancy agreement for a tenancy that was to begin on June 1, 2020, and end on July 1, 2021. Monthly rent was set at \$1,695.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$847.50. Both parties confirmed that the tenant had decided not to continue with the tenancy.

The tenant provided the landlord with their forwarding address by registered mail on May 2, 2020, and again in person on May 13, 2020. The tenant provided a copy of the receipt in their evidentiary materials. The tenant testified that they also provided the landlord with an updated forwarding address when they moved in July 2022, but despite this, the landlord did not return any portion of their security deposit. The landlord confirmed that they did receive the tenant's forwarding address.

The landlord testified that they returned the tenant's security deposit on January 17, 2023, which the tenant confirmed that they had received. The tenant is still requesting compensation for the landlord's failure to return their security deposit within the required time period, as well as recovery of the \$100.00 filing fee paid for this application.

Analysis

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord did not return the tenant's security until January 17, 2023, well after the tenant had provided their forwarding address in writing, and after the tenant had filed this application for dispute resolution. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit and the landlord did not provide evidence to support that they had written authorization at the end of the tenancy to retain any portion of the tenant's deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have 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 tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to monetary compensation equivalent to value of the original deposit, plus applicable interest on the original deposit. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$0.77 is payable as interest on the tenant's security deposit from April 17, 2020 when the deposit was originally paid, until the deposit was returned on January 17, 2023.

As the tenant was successful in their application, I find that the tenant is entitled to recover the filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour under the following terms:

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	847.50
Interest on security deposit	0.77
Recovery of Filing Fee	100.00

Total Monetary Order	\$948.27
-----------------------------	-----------------

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of 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: June 14, 2023

Residential Tenancy Branch