



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: MNRL-S, MNDCL-S, FFL
 Tenants: MNSDS-DR, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

While the tenant JI attended the hearing by way of conference call, the landlords did not. I waited until 1:41 p.m. to enable the landlords to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 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.

Accordingly, **in the absence of any submissions in this hearing from the landlords, I order the landlords' entire application dismissed without leave to reapply.**

The tenant provided sworn testimony that the landlords were served with the tenants' application for dispute resolution and evidence packages on October 13, 2022 by way of registered mail. The tenants provided the tracking information and receipts in their evidentiary materials. The tracking numbers are noted on the cover page of this decision. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlords deemed served with the tenants' application and evidence, 5 days after mailing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to monetary compensation for the landlord's failure to comply with the *Act*?

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

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.

The tenant testified that this fixed-term tenancy began on October 25, 2021, and ended on or about September 2, 2022. Monthly rent was set at \$2,800.00, payable on the first of the month. The landlords had collected a security deposit of \$1,400.00, which the landlords still hold. The tenant testified that the move-out inspection was performed on September 4, 2022, and a forwarding address was provided to the landlords by email on September 7, 2022.

The tenant testified that no permission was ever provided for the landlords to retain their security deposit.

The tenants are requesting the return of their deposits, as well as compensation for the landlord's failure to comply with section 38 of the *Act*.

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 tenants' 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 tenants' 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, the landlords did file an application for dispute resolution on September 12, 2022, which is within the required 15 days of being provided with the tenants' security deposit. As the landlords did comply with section 38 of the *Act*, I find that the tenants are not entitled to compensation. As the landlords' application was dismissed, I order that the landlords return the tenants' security deposit in full, plus applicable interest.

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, \$12.34 is payable as interest on the tenants' security deposit from October 12, 2021, when the deposit was originally paid, until the date of this decision, June 14, 2023.

As the tenants' application had merit, I allow the tenants to recover their filing fee.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

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

Item	Amount
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Return of Security Deposit plus applicable deposit	\$1,412.34
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,512.34

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 landlords 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