



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was reconvened from a hearing on June 12, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- return of the security deposit and/or pet damage deposit pursuant to section 38;
- compensation for monetary loss or money owed by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

On June 12, 2023, I issued an interim decision in this matter (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Tenant and the Tenant's friend JS attended this reconvened hearing.

No one attended this hearing on behalf of the Landlord. I left the teleconference hearing connection open until 2:12 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the hearing notice. I used the teleconference system to confirm that the Tenant's group and I were the only ones who had called into the hearing.

Preliminary Matter: Service of Dispute Resolution Documents

The Tenant confirmed that he served the documents required by the Interim Decision, including notice of this hearing, on the Landlord via registered mail sent on June 15, 2023. The Tenant submitted a tracking number in support of service (referenced on the cover page of this decision). I find the Landlord was served with the Tenant's dispute resolution documents in accordance with sections 88 and 89 of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenant's dispute resolution documents on June 20, 2023, or five days after mailing.

Having found the Landlord to be deemed served with notice of this hearing, I directed the hearing to proceed in the Landlord's absence.

Preliminary Matter: Clarification of the Tenant's Claims

The Tenant applied for return of the security deposit and another claim for compensation of \$600.00. The Tenant confirmed that he is only making one claim for the return of double the security deposit in the amount of \$600.00. Pursuant to Rule 4.2 of the Residential Tenancy Branch Rules of Procedure and section 64(3)(c) of the Act, I have removed the Tenant's duplicate monetary claim included in this application.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on May 28, 2020 and ended on January 31, 2022. The rental unit was a room in an apartment which the Tenant had shared with other tenants renting from the Landlord. The Tenant was initially renting a smaller room in the apartment for \$600.00 per month. Rent was due at the end of each month. In February 2021, the Tenant moved into a larger bedroom in the same apartment for \$800.00 per month. By the time that the tenancy ended, rent was \$850.00 per month. The Tenant paid a security deposit of \$300.00 at the start of the tenancy. The parties did not have any written tenancy agreement.

According to the Tenant, there were no official move-in or move-out inspections and the parties did not complete any condition inspection reports. When the Tenant was moving out, he had asked for an inspection via email, but this was declined.

The Tenant confirmed that he sent his forwarding address via email to the Landlord's representatives on January 1, 2022. The Tenant submitted a copy of this email into evidence, as well as an email reply from the Landlord's accounting department acknowledging receipt on February 7, 2022. The Tenant also submitted text message

correspondence with the Landlord's representatives indicating that the Landlord wanted to withhold the Tenant's security deposit for late fees. The Tenant did not agree as the parties did not have any contract about late fees. The Tenant seeks return of double the security deposit.

Analysis

1. Is the Tenant entitled to return of double the security deposit?

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations.

I find the Tenant was not offered two opportunities for a move-out inspection in accordance with the Act and the regulations by the Landlord, which the Tenant then failed to participate in. Therefore, I find the Tenant did not extinguish his right to the return of the security deposit under sections 24(1) or 36(1) of the Act. In addition, I find the Tenant gave his forwarding address in writing to the Landlord within one year of the tenancy end date. As such, I find the Tenant's right to the security deposit was also not extinguished under section 39 of the Act.

Under section 38 of the Act, a landlord must (a) repay a security or pet damage deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

In this case, I find the tenancy ended on January 31, 2022.

I find there is insufficient evidence that the Landlord had agreed to accept service via email. However, I find the Landlord acknowledged receipt of the Tenant's email with the Tenant's forwarding address on February 7, 2022. Therefore, pursuant to section 71(2)(b) of the Act, I find the Landlord was sufficiently served with the Tenant's forwarding address in writing by February 7, 2022.

I find that under section 38(1) of the Act, the Landlord had 15 days from February 7, 2022, or until February 22, 2022, to repay the security deposit to the Tenant or make an application to claim against the security deposit. I find the Tenant did not agree in writing for the Landlord to keep the deposit. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding compensation owed by the

Tenant or authorization for the Landlord to keep the deposit. I find the Landlord did not return the deposit in full to the Tenant or make an application by February 22, 2022 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the deposit.

Based on the foregoing, I conclude that the Tenant is entitled to a return of double the security deposit under section 38 of the Act.

In addition, section 38(1) of the Act requires that interest be paid on a security deposit. The interest rate on deposits was 0% from 2020 to 2022, and is 1.95% in 2023. According to Residential Tenancy Policy Guideline 17. Security Deposit and Set off, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$3.44 of interest on the security deposit from the beginning of the tenancy to the date of this decision, calculated as follows:

2020 \$300.00: \$0.00 interest owing (0% rate for 59.57% of year)
2021 \$300.00: \$0.00 interest owing (0% rate for 100.00% of year)
2022 \$300.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$300.00: \$3.44 interest owing (1.95% rate for 58.63% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$603.44 (or $\$300.00 \times 2 + \3.44) for the return of double the security deposit plus interest.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has been successful in this application. I award the Tenant reimbursement of the filing fee under section 72(1) of the Act.

Conclusion

The Tenant's claims for return of the security deposit and reimbursement of the filing fee are successful.

Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$703.44**, calculated as follows:

Item	Amount
Return of Double the Security Deposit ($\$300.00 \times 2$)	\$600.00
Interest on Security Deposit	\$3.44

Filing Fee	\$100.00
Total Monetary Order for Tenant	\$703.44

This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, 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: August 2, 2023

Residential Tenancy Branch