

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Tenant L.R., Tenant C.R. attended the hearing for the tenant.

No one attended the hearing for the landlord.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Landlord W. was served on August 29, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Service of Evidence**

Based on the submissions before me, I find that the tenant's evidence was served to the landlord in accordance with section 88 of the Act.

No evidence was received by the Residential Tenancy Branch from the landlord.

### **Preliminary Matters**

The tenant requested that the landlord company name be amended to Welbec Properties Ltd.

The tenant affirms that the rental unit address in question is different from that on the tenancy agreement as she had requested to move to a different property managed by the same landlord to be next door to her sister. Her sister affirmed this to be true.

## **Issues to be Decided**

Is the tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

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

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 16, 2022, with a monthly rent of \$1,650.00, due on first day of the month, with a security deposit in the amount of \$825.00 and a pet damage deposit in the amount of \$825.00.

The tenant affirms that she provided the landlord with her forwarding address for the return of her security deposit and her pet damage deposit but that it has not been returned.

The tenant provided a copy of a text conversation with a “Kent Landord”. The tenant affirms that this name refers to the Kent who had signed the initial tenancy agreement. In the text conversation the tenants asks for an email she could send her notice to as she had already sent it to another employee but had not heard back. She was provided with one. The tenant affirms that “notice” refers to a notice of forwarding address.

The tenant affirms that she provided her forwarding address in person at the property management office and a second time by registered mail.

In support, the tenant provided a picture of a letter, dated May 26, 2023, and addressed to Welbec Properties Inc at the address provided for service on the tenancy agreement. It provides her forwarding address and requests the return of her security deposit and pet damage deposit. The tenant also provided a registered mail receipt dated May 26 with a postal code that matches that of the landlord’s service address.

The tenant affirms that Condition Inspection Reports were not done on move in nor move out. She further affirms that she never agreed to allow the landlord to retain any portion of her deposits.

## **Analysis**

**Is the tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?**

I deem the landlord to have been served, by registered mail, with the tenant's forwarding address on May 31, 2023. The tenant affirms that she has not received her deposits from the landlord, did not give permission for them to be retained, and it has been more than 15 days since the provision of a forwarding address.

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security and/or pet damage deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act states that if the landlord does not return the security and/or pet damage deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the pet damage deposit.

I find that there is no evidence provided to show that the landlord had the tenant's agreement in writing to keep the security and/or pet damage deposit or that the landlord applied for dispute resolution within 15 days of receiving the tenant's forwarding address to retain a portion of the pet damage deposit as required under section 38(1).

Under section 38(6) of the Act, I find that the landlord must pay the tenant double the security and/or pet damage deposit as they have not complied with section 38(1) of the Act.

Therefore, I find the tenant is entitled to a Monetary Order for the return of double their security deposit and pet damage deposit under sections 38 and 67 of the Act, in the amount of \$3,300.00.

The landlord may still file an application for lost revenue and damages; however, the issue of the security and/or pet damage deposit has now been conclusively dealt with in this hearing.

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

As the tenant was successful in their application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

### **Conclusion**

I grant the tenant a Monetary Order in the amount of **\$3,400.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act	\$3,300.00
authorization to recover the filing fee for this application from the landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$3,400.00</b>

The tenant is provided with this Order in the above terms and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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 Act.

Dated: November 16, 2023

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Residential Tenancy Branch