



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The first application is for:

- a Monetary Order for the return of all or a portion of their deposits under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

The second application is for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlords under section 72 of the Act

Both the Landlords and Tenants attended the hearing and confirmed service of the Dispute Resolution Proceeding and evidence for both applications.

Preliminary Matters

The Tenants legal counsel confirmed that the Tenants are no longer seeking compensation for general maintenance costs in the amount of \$1,282.31 and payment of damages in the amount of \$1,260.49.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their deposits?

Are the tenants entitled to a Monetary Order for damage or loss under the Act,

regulation or tenancy agreement?

Are the Tenants entitled to recover the filing fee for the two applications from the Landlords?

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.

Both parties testified that this tenancy began on July 1, 2021, with a monthly rent of \$3,500.00, due on first day of the month. The Tenants paid a security deposit of \$1,750.00 and a pet damage deposit of \$1,000.00. The Tenancy ended on April 30, 2023.

Deposits

The Tenants are seeking compensation of double the amount of their deposits totalling \$5,500.00.

A Decision dated January 25, 2023, determined that the Tenants' provided the Landlords their forwarding address on November 21, 2022, and that the Landlords were to either return the deposits or file for a dispute resolution hearing by December 6, 2023. The Decision also determined that the Tenants' application for a Monetary Order for the return of their deposits doubled was dismissed, with leave to reapply. I have included the Decision number on the cover page.

The following facts are undisputed:

- In October 2022, both parties entered into Mutual Agreement to End a Tenancy #RTB-8 form (Mutual Agreement to End Tenancy) dated April 30, 2023. Both parties provided the Mutual Agreement to End Tenancy as evidence.
- The Landlords provided the Tenants a security deposit refund cheque dated January 4, 2023, for \$1,750.00 and a pet damage deposit refund cheque dated January 4, 2023, with no dollar value. These two cheques were refused by the Tenants' legal counsel due to technical errors. The Landlords provided the cheques as evidence.
- The Landlords provided the Tenants a security deposit refund bank draft dated February 9, 2023, for \$1,750.00 and a pet damage deposit refund bank draft

dated February 9, 2023, for \$1,000.00. These two bank drafts were refused by the Tenants' legal counsel. The Two bank drafts were provided as evidence.

Nominal or Aggravated Damages

The Tenants are seeking nominal or aggravated damages in the amount of \$5,000.00 for non-compliance with the legislation and the tenancy agreement which have caused the Tenants serious mental injury.

The Tenants Appendix "A" that was submitted as evidence states the following reason for this claim:

- Pursuant to section 7, section 67, or alternatively section 62(3), of the RTA an order for payment of nominal, or aggravated, damages in the amount of \$5,000 for the Landlords breaches of the Agreement (sections 5, 6, 7, 8, and 13), and non-compliance with the legislation and the tenancy agreement, which have caused the Tenants serious mental injury.

The Landlords written submissions that were submitted as evidence state the following:

- There is no reference to this claim or the amount of compensation sought on the Monetary Worksheet.
- The Landlords are confused about this claim and don't know how to respond to the random pieces of evidence presented.

Analysis

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their deposits?

If the Landlord does not have the Tenant's agreement in writing to retain all or a portion of their deposits, 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 the deposits or make an application for dispute resolution claiming against the deposits.

As the tenancy ended on April 30, 2023, based on the Mutual Agreement to End Tenancy entered into by the parties and provided as evidence, the Landlords were not required to return the deposits until 15 days after the tenancy ended as required under section 38(1) of the Act. The Landlords made two attempts to return the deposits to the Tenants prior to the tenancy ending on January 4, 2023, and February 9, 2023. The

Tenants refused the second attempt because they were not satisfied with the full amount of the deposits of \$2,750.00 being returned. The Tenants were only willing to accept the deposits being returned if the returned amount was for \$5,500.00.

Section 38(6) of the Act states that if the Landlord does not return the deposits or file a claim against the Tenant within fifteen days, the Landlord must pay the Tenant double the amount of the deposits. The Tenants are not entitled to double their deposits because the Landlords made two attempts to return the deposits prior to the deadline of May 15, 2023.

Therefore, I find that because the Landlords made two attempts to return the deposits prior to the deadline of May 15, 2023, as required under section 38(1) of the Act, the Tenants would be entitled to a Monetary Order for the return of their deposits of \$2,750.00, plus interest under section 38 of the Act.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Section 59(2)(b) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The Tenants' application does not include any detailed information on what the damage or loss was under that Act, regulation or tenancy agreement. The Landlords found it difficult to determine what this claim was for because there was no detailed information provided about this claim. The Tenants' application and the Appendix "A" that was submitted as evidence does not include full particulars of the dispute as required under section 59(2)(b) of the Act.

For the above reasons, the Tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Are the Tenants entitled to recover the filing fee for two applications from the Landlords?

As the Tenants were successful in their first application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their first application under section 72 of the Act.

As the Tenants were not successful in their second application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for their second application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,855.88** under the following:

Monetary Issue	Granted Amount
a Monetary Order for the return of all their deposits, plus interest under section 38 of the Act	\$2,755.88
authorization to recover the filing fee for the first application from the Landlords under section 72 of the Act	\$100.00
Total Amount	\$2,855.88

The Tenants are provided with this Order. The Landlords must be served with **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: January 24, 2024

Residential Tenancy Branch