

DECISION

Introduction

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

- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

It also dealt with the Tenants' 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 under sections 38 and 67 of the Act

Both the Landlord and the Tenant HO attended the hearing. The Tenant was represented by an advocate.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both the Landlord and the Tenant acknowledged receiving the Proceeding Package in accordance with the Act.

Service of Evidence

Both the Landlord and the Tenant acknowledged receiving the other party's evidence.

Issues to be Decided

Is the Landlord entitled to retain the security deposit?

Are the Tenants entitled to the return of the security deposit?

Is the Landlord entitled to recover the filing fee?

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.

The tenancy ended on September 30, 2023. The tenancy ended pursuant to an RTB order following a 10 Day Notice. An Arbitrator issued an order of possession and a monetary order in the amount of \$3,327.56 for unpaid rent and utilities.

The Tenants sought judicial review of the Arbitrator's decision. On January 12, 2024, the BC Supreme Court dismissed the petition for judicial review.

On October 13, 2023, the Landlord brought their application to retain the security deposit based on the monetary order, which had not been paid by the Tenants. On October 23, 2023, the Tenants brought their application for the return of the security deposit.

The Landlord has separately brought enforcement proceedings in provincial court. On January 22, 2024, a provincial court judge ordered that the Tenants pay \$200.00 each month until the debt is paid.

The Tenant said that when they moved out, the Landlord said that he would return the deposit. The Landlord said that he told the Tenants that he would deal with the deposit in accordance with the Act.

Analysis

Is the Landlord entitled to retain the security deposit?

Section 38 of the Act provides that "A landlord may retain from a security deposit or a pet damage deposit an amount that (a) the director has previously ordered the tenant to pay to the landlord, and (b) at the end of the tenancy remains unpaid." It also provides that "A landlord may retain an amount from a security deposit or a pet damage deposit if, ... (b) after the end of the tenancy, the director orders that the landlord may retain the amount."

I am not able to find, based on the limited evidence submitted, that the Landlord promised to return the deposit to the Tenants.

Based on section 38 and the admitted fact that the monetary order was not paid in full by the Tenants, I order that the Landlord may retain the security deposit in partial satisfaction of the order. The Landlord applied within 15 days of the tenancy ending, as required by section 38 of the Act. With interest, the amount of the deposit is \$1,024.59. This amount obviously reduces the Tenants' debt to the Landlord.

Are the Tenants entitled to the return of the security deposit?

Because the Landlord is entitled to retain the deposit, the Tenants application is dismissed without leave to reapply.

Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I find they are entitled to the return of the filing fee.

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

The Landlord's application is granted. The Landlord is entitled to retain the security deposit, which is \$1,024.59.

The Landlord is granted a monetary order in the amount of \$100.00 for the filing fee.

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: March 7, 2024

Residential Tenancy Branch