

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 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

The Tenant attended the hearing at the appointed date and time. No one attended for the Landlords.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenant stated that they served their Proceeding Package and evidence to the Landlords by Registered Mail on December 14, 2023. The Tenant provided the Registered Mail tracking information in support. Pursuant to Section 89 and 90 of the Act, the Landlords are deemed served with the above-mentioned documents five days later, on December 19, 2023.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security 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.

The Tenant stated that the tenancy began on March 14, 2022, with a monthly rent of \$1,250.00, due on 15th day of the month, with a security deposit in the amount of \$625.00. The Tenant stated that the tenancy ended on August 12, 2023.

The Tenant is seeking the return of their security deposit. The Tenant stated that despite several attempts at communicating with the Landlords to have the deposit returned, the Landlords continue to hold the Tenant's security deposit. The Tenant stated that she provided the Landlords her forwarding address in writing on October 29, 2023 by regular mail and also by email. The Tenant stated that the Landlord had consented to email being used as a form of service for tenancy related documents.

The Tenant stated that she has not consented to the Landlords retaining any portion of her deposit, and that the Landlords have not return the deposit, nor have they submitted an application to retain the Tenant's deposit. The Tenant provided proof of the deposit being paid, RTB 47 containing the Tenant's forwarding address, which was sent to the Landlords, as well as a copy of the email in support.

If successful, the Tenant is seeking to return of the \$100.00 filing fee.

Analysis

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38(4) allows a landlord to retain from a security 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 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 the security 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 deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security deposit.

I find that the Tenant provided sufficient evidence to demonstrate that they served their forwarding address in writing to the Landlords on October 29, 2023, which is after the tenancy has ended. Pursuant to Section 90 of the Act, the Landlords are deemed served with the Tenant's forwarding address three days later, on November 1, 2023.

I find that there is no evidence provided to show that the Landlords 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 security and/or pet damage deposit as required under section 38(1).

Under section 38(6) of the Act, I find that the Landlords must pay the Tenant double the security deposit as they have not complied with section 38(1) of the Act.

I further find that the Tenant's deposit has accrued interest in the amount of \$17.21 which was been added to the doubling of the original deposit.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act, in the amount of \$1,267.21.

The Landlord may still file an application for lost revenue and damages; however, the issue of the security 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 **\$1,367.21** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$1,267.21
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$1,367.21

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: April 16, 2024

Residential Tenancy Branch