



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Cascadia Apartment Rentals Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNRL-S, LRSD, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with the Landlord's December 1, 2023, and the Tenant's November 22, 2023, Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The Landlord:

- 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

The Tenant:

- 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

Service of Notice of Dispute Resolution Proceeding

- I find that the Tenant was served on December 20, 2023, by registered mail in accordance with section 89(1) of the Act.
- I find that the Landlord was served on January 13, 2024, by registered mail in accordance with section 89(1) of the Act.

Service of Evidence

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

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?
2. Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security and pet deposits in partial satisfaction of the Monetary Order requested under section 38 of the Act?
3. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?
4. Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposits under sections 38 and 67 of the Act?
5. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

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 by the parties which indicates that the tenancy began on January 10, 2016, with a monthly rent of \$945.00 due on the first day of each month and that security and pet damage deposits in the amount of \$945.00 were paid by the Tenant. The Landlord currently holds the security and pet deposits. The tenancy ended on November 30, 2023.

According to the Landlord, the Tenant did not give one month's notice to end the tenancy and the Landlord was unable to re-rent the unit until December 10, 2023, and therefore the Landlord is seeking rent for the period December 1 to 9, 2023 in the amount of \$302.85.

The Tenant stated that the Landlord was provided with a notice to end tenancy, which included her forwarding address, on October 27, 2023. A copy of the email was submitted as evidence. She stated that she received a text from the Landlord's assistant on December 2, 2023, stating that the assistant did not like the imbedded email and asked her to resend it which the Tenant later did that same day.

The Landlord confirmed the second email was received on December 2, 2023.

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

I find that the Tenant provided one month's notice to end the tenancy in accordance with section 45 of the Act and that the Landlord is not entitled to any rent beyond November 30, 2023.

I find, therefore, that the Landlord is not entitled to a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act. The claim for unpaid rent is hereby dismissed without leave to reapply.

Is the Landlord entitled to 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? If not, Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Section 38 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As a forwarding address was provided to the Landlord on October 27, 2023, and the Landlord made its application on December 1, 2023, I find that the Landlord did not make its application within 15 days of the tenancy ending/the forwarding address being provided.

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 or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

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

Based on the evidence submitted, the testimony of the parties and on a balance of probabilities, I find the Landlord did not repay the Tenant's security and pet deposits, did not have the Tenant's written permission to retain the deposits and did not file an application for dispute resolution within 15 days of the tenancy ending or the Landlord receiving the Tenant's forwarding address. The Landlord's application to retain all or a portion of the Tenant's security and pet deposits is therefore dismissed without leave to reapply.

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the security and pet deposits, plus interest, as they have not complied with section 38(1) of the Act.

I find, therefore, that the Tenant is entitled to a monetary award for the return of double her security and pet damage deposits under sections 38 of the Act, in the amount of \$1,917.60, including interest.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was unsuccessful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act and therefore this portion of the application is dismissed without leave to reapply.

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 **\$2,017.60** under the following terms:

Monetary Issue	Granted Amount
a monetary award for the return of double their security and pet damage deposits under sections 38 of the Act	\$1,917.60
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$2,017.60

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

The Landlord's application for a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed without leave to reapply.

The Landlord's application to retain all or a portion of the Tenant's security and pet deposits under section 38 of the Act is dismissed without leave to reapply.

The Landlord's application to recover the filing fee for this application under section 72 of the Act is dismissed without leave to reapply.

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: May 08, 2024

Residential Tenancy Branch