

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 damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

This hearing 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 section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Preliminary Matters

The Landlord did not attend at the appointed time set for the hearing, although I waited until 1:56 p.m. to enable them to participate in this hearing scheduled for 1:30 p.m. I confirmed that the correct call-in number and participant code had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed on the teleconference system that the Tenant, the Tenant's advocate, and I were the only people who had called into this hearing. In the absence of the Landlord, under Rule 7.1 and 7.3 of the Rules of Procedure, I order the Landlord's application dismissed, without leave to reapply.

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

I find that the Tenants served their application Proceeding Package and evidence in person to the Landlord's agent K.W. on May 6, 2024, and in accordance with section 89(1) of the Act. The Landlord is deemed served on May 6, 2024, and in accordance with section 90 of the Act. The Tenants provided the Proof of Service Notice of Dispute Resolution Proceeding Package #RTB-55 form with the Landlord's agent's name and signature to confirm this service.

Issues to be Decided

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

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

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

Tenant A.A. testified that this tenancy began on June 1, 2023, with a monthly rent of \$2,588.00, due on the first day of the month. The Tenants paid a security deposit of \$250.00 and a pet damage deposit of \$200.00.

Tenant A.A. testified the following:

- they provided the Landlord with the Tenant's Notice of Forwarding Address for the Return of Security and Pet Damage Deposit #RTB-47 form on February 23, 2024
- the Landlord is retaining all of their security deposit and pet damage deposit
- they did a move-in condition inspection report with the Landlord and were provided a copy
- they were not given the opportunity to do a move-out condition inspection report with the Landlord
- the Landlord did a move-out condition inspection report on their own and then provided the Tenants a copy

Analysis

Are the Tenants 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 deposits 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 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.

Section 38(6) of the Act states that if the Landlord does not return the deposits or file a claim against the Tenant to retain the deposits within fifteen days, the Landlord must pay the Tenant double the amount of the deposits.

The Tenant provided the Landlord with the Tenant's Notice of Forwarding Address for the Return of Security and Pet Damage Deposit #RTB-47 form on February 23, 2024, in person.

Based on the evidence before me, the testimony from Tenant A.A., and on a balance of probabilities, I find the Landlord was deemed served with the Tenants' forwarding address on February 23, 2024, in accordance with section 90 of the Act. I further find that the Landlord was obligated to obtain the Tenants' written consent to keep their deposits or to file an application to retain the deposits on or before March 9, 2024, 15 days after receiving the Tenants' forwarding address.

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

Therefore, I find the Tenants are entitled to a Monetary Order for the return of all their deposits, plus interest under sections 38 of the Act, in the amount of \$910.75.

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

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

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$1,010.75** under the following:

Monetary Issue	Granted Amount
a Monetary Order for the return of all their deposits, plus interest under sections 38 of the Act	\$910.75
authorization to recover the filing fee from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$1,010.75

The Tenants are provided with this Order. 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.

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: June 12, 2024

Residential Tenancy Branch