

DECISION

Introduction

This hearing dealt with an application filed by both the Landlord and the Tenants pursuant to the Residential Tenancy Act (the “Act”):

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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 Tenants under section 72 of the Act

The Tenants applied for:

- a Monetary Order for the return of all or a portion of their pet damage deposit pursuant to sections 38 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 (Proceeding Package)

As both parties were in attendance, I confirmed that there were no issues with service of the parties' Proceeding Packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's hearing materials.

Preliminary Matter

At the outset of the hearing, the Landlord sought to withdraw their application in its entirety. The Landlord testified that they are no longer seeking any damages from the Tenants.

Based on the Landlord's testimony, and having determined that the withdrawal of the Landlord's application is of no prejudice to the Tenants, I have exercised my authority under section 64(3)(a) of the Act to authorize the withdrawal of the Landlord's application.

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 showing that this tenancy began on July 1, 2023, and ended on May 31, 2023. Monthly rent of \$7,850.00 was due on the first day of the month. The Landlord collected a security deposit in the amount of \$3,925.00 and a pet damage deposit in the amount of \$3,925.00. The parties agreed that the Landlord returned the Tenants' pet damage deposit in full. The parties agree that the Landlord continues to hold the Tenants security deposit. A copy of the written tenancy agreement is submitted into evidence.

The parties agreed that a move-in condition inspection was completed, and a copy of the Move-In Condition Inspection Report was provided to the Tenants. The parties agreed that a move-out condition inspection was completed. The parties agreed that the Tenants authorized the Landlord to withhold \$8.00 from their security deposit in writing on the Move-Out Condition Inspection Report.

The Tenant testified that they did not receive a copy of the Move-Out Condition Inspection Report until June 25, 2024, when the Landlord served them with evidence for this dispute.

The Landlord testified that they sent the Tenants the Move-Out Condition Inspection Report by email on June 10, 2024, to the email address provided by the Tenants for service of documents. The Landlord directed my attention to an RTB-51 Address for Service document which is included in their evidence and electronically signed by the Tenants. Also included in the Landlord's evidence is a copy of letter enclosing the move-out condition inspection report dated June 10, 2024, indicating it was sent to the Tenants by email.

The Tenant testified they do not believe they would have agreed to service by email as they do not regularly use their email address.

The parties agreed that the Tenants provided their forwarding address to the Landlord in writing on May 31, 2024, on the Move-Out Condition Inspection Report.

The Landlord filed their application for authorization to retain all or a portion of the Tenant's security deposit on July 14, 2024.

Issues to be Decided

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

Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

Analysis

Based on section 24 and 36 of the Act, a landlord or tenant can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act.

In this case, I find that neither the Landlord nor the Tenants extinguished their rights in relation to the security deposit.

The Tenants took issue with the Landlord's provision of the Move-Out Condition Inspection Report indicating that they did not receive it until the Move-Out-Condition Inspection Report until June 25, 2024.

Section 36(2)(c) of the Act states that the right of a landlord to claim against a security deposit is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Section 18(1)(b) of the regulations required the landlord to provide the Move-Out Condition Inspection within 15 days of the date it is completed and the date the landlord receives the tenant's forwarding address in writing, whichever is later.

In this case, the forwarding address was provided on the Move-Out Condition Inspection Report which was completed on May 31, 2024. Therefore, I find that the Landlord had until June 15th, 2024, to provide the Tenant with a copy of the Move-Out Condition Inspection.

I have considered the evidence of the parties, and I find in favour of the Landlord that they sent the Tenant the Move-Out Condition Inspection on June 10, 2024, by email as indicated in the Landlord's documentary evidence.

Section 89 of the Act and section 43 of the Residential Tenancy Regulation (the Regulations) confirm a party may serve a Notice of Dispute Resolution Proceeding by

email to an address provided by the other party for service of documents. The Tenant argued that they don't believe they would have agreed to service by email because they rarely use their email address.

To the contrary, the Landlord has submitted a RTB-Form 51 – Address For Service which has been electronically signed in the same manner as the Tenant's signed the tenancy agreement. Further, the Tenants' email address is indicated on the tenancy agreement as primary contact information. For this reason, I find it more likely than not that the Tenants provided their email address to the Landlord for service of documents.

Section 44 of the Regulations states that a document served by email in accordance with section 43 of the Act is deemed to be received on the third day after it is emailed. In this case, the Tenants are deemed to have received the 10-Day Notice on June 13, 2024, prior to the deadline of June 15, 2024. On that basis, I find the Landlord has not extinguished their rights in relation to the security deposit.

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 any security and/or pet damage 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 and/or pet damage deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security and/or pet damage deposit.

In this case, the Landlord had until June 15th, 2024, to make an application for dispute resolution claiming against the security deposit. The Landlord made their application claiming against the security deposit on June 14th, 2024. On that basis, I find the Tenants are not entitled to double the amount of the security deposit under section 38(6) of the Act.

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. In this case, the parties agreed that the tenants agreed in writing that the Landlord could retain \$8.00 from the security deposit.

Based on the foregoing, I order the Landlord to return to the Tenant their security deposit less the \$8.00 agreed to by the parties in writing, plus interest within seven (7)

days of this decision. To give effect to this order, the Tenants are granted a monetary order in the amount of \$4,127.80 as set out below.

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 Tenants a Monetary Order in the amount of **\$4,127.80** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of a portion of their security deposit and pet damage deposit (\$3,925.00 - \$8.00)	\$3,917.00
Interest on the Security Deposit	\$110.80
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$4,127.80

The Tenants are provided with this Order in the above terms. Should the Tenant wish to enforce this Order, the Landlord must be served with this Order. 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: September 25, 2024

Residential Tenancy Branch