

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Landlord's Application for Dispute Resolution, filed on August 1, 2024, is 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 Tenant under section 72 of the Act

The Tenant's Application for Dispute Resolution, filed on September 18, 2024, is 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

Landlord A.B. attended the hearing for the Landlord.

Tenant W.T. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

The Landlord testified that he did not serve his application for dispute resolution on the Tenant. The Tenant testified that he did not receive the Landlord's Proceeding Package. I find that the Landlord failed to serve the Tenant in accordance with the Act.

The purpose of serving documents under the Act is to notify the parties being served of matters relating to the Act, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the Tenant has been served with the Landlord's Proceeding Package.

Residential Tenancy Branch Policy Guideline PG-12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

As the Landlord failed to serve his Proceeding Package on the Tenant, the Landlord's application is dismissed with leave to reapply.

Service of Evidence

The Landlord acknowledged service of the Tenant's evidence and I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

The Landlord testified that he sent his evidence to the Tenant before he made his claim and submitted his evidence to the Residential Tenancy Branch. The Landlord believed that submitting his evidence to the Residential Tenancy Branch online fulfilled his requirement for service of evidence.

Section 88 of the Act sets out the acceptable methods of service of evidence. Submitting the documents to the Residential Tenancy Branch online is not a method of serving documents. I find that the Landlord did not serve their evidence to the Tenant in accordance with section 88 of the Act.

As stated above, procedural fairness requires that a respondent in a legal dispute has full and fair disclosure of the case against them. Though the Tenant had an awareness of the case against him, a mere awareness does not satisfy the need for procedural fairness. The Tenant was unable to prepare a defense to the Landlord's evidence. Under Rule of Procedure 3.17 I am excluding the Landlord's evidence from consideration.

Issues to be Decided

Is the Tenant or the Landlord entitled to a Monetary Order regarding the Tenant's security and/or pet damage deposit?

Is the Tenant authorized to recover the filing fee from the Landlord for his 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 May 21, 2024 and was for a fixed term until July 21, 2025 with a \$1,900.00 monthly rent, due on first day of the month, with a security deposit in the amount of \$1,900.00. The rental unit is a basement suite in a house.

The Tenant vacated the rental unit on July 20, 2024. The Tenant provided his forwarding address to the Landlord on July 29, 2024.

The Tenant testified that when he vacated the rental unit on July 19, 2024 the Landlord told the Tenant that the security deposit would be returned to the Tenant.

The parties agree that the Landlord paid the Tenant \$1,000.00 of the security deposit but the Landlord kept the remaining \$900.00.

The Landlord testified that, at the end of the tenancy, there was damage to the wall, paint damage, and there was damage to the entrance door. The Landlord testified that he texted photos of the damage to the Tenant.

The Landlord testified that the Landlord sold the property after this tenancy ended. The Landlord explained that the buyers reduced their purchase price by \$20,000.00, and part of this reduction was due to the damage in the rental unit.

The Tenant testified that he did not cause any damage to the rental unit, it was all there when he moved in. The tenancy was very short because the Tenant was not satisfied with the rental unit.

The Tenant testified that he has asked the Landlord to return his full deposit but the Landlord refuses to do so.

Analysis

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(4) allows a landlord to retain all or a portion of 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. No such agreement was provided in this case.

If a 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 deposits or file a claim against the Tenant's security deposit within 15 days, the Landlord must pay the Tenant double the amount of the security and/or pet damage deposit.

The Landlord's application for dispute resolution does not claim against the Tenant's security deposit.

I find the Landlord received the Tenant's forwarding address on July 29, 2024, and the Landlord did not return the full security deposit to the Tenant or make an application against the security deposit within 15 days. Under section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

The security deposit was \$1,900.00 at the start of this tenancy and had accrued \$8.14 in interest under the regulations. The Landlord returned \$1,000.00 to the Tenant and retained \$900.00.

Residential Tenancy Branch Policy Guideline 17 at section F.5 directs that I double the amount paid as a security deposit ($\$1,900.00 \times 2 = \$3,800.00$) then deduct the amount already returned to the Tenant ($\$3,800.00 - \$1,000.00 = \$2,800.00$) and then add the interest ($\$2,800.00 + \$8.14 = \$2,808.14$).

Therefore, I find the Tenant is entitled to a Monetary Order for the return of their security deposit and pet damage deposit under sections 38 and 67 of the Act, in the amount of \$2,808.14.

The Landlord may still file an application for lost revenue and damages if the time limit to do so has not expired. 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.

As the Landlord was not successful in his application, I find that the Landlord is not entitled to recover the filing fee paid for this application.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2,908.14** 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 $2 \times \$1,900.00 = \$3,800.00$ Less returned \$1,000 = \$2,800.00	\$2,808.14

Plus interest of \$8.14 = \$2,808.14	
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$2,908.14

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 and enforced in the Small Claims Court of British Columbia.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, with leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant 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 Act.

Dated: November 13, 2024

Residential Tenancy Branch