

DECISION

Introduction

This hearing dealt with cross applications including:

The Landlord's September 19, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- 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 Tenants' October 26, 2024, 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 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

The December 2, 2024, teleconference hearing was attended by the two Tenants. The Landlords did not attend and were not represented.

The Tenants had the opportunity to provide sworn testimony, refer to evidence, and ask questions.

Preliminary Matters

The Landlords did not attend the scheduled hearing and so I dismissed their September 19, 2024, application under RTB Rule of Procedure 7.3, with leave to reapply for unpaid rent, but no leave to reapply for their request to retain the security deposit/pet damage deposit or their request to recover the costs of the filing fee.

I corrected the last name of Tenant C.A. on instruction from Tenant C.A. and I also added Landlord K.E. to this dispute because the Tenants had named both Landlords in their application. I made these changes under RTB Rule of Procedure 7.7.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant C.B. stated that they served the two Landlord's with Notice of their Dispute on October 31, 2024, to the Landlord's Address for Service and that the package to Landlord K.E. was collected on November 8, 2024, and the package to Landlord A.J.S. was collected on November 26, 2024.

The Tenants provided proof of tracking to confirm service as described.

I therefore find that the Tenants served the Landlords as required by the Act, and further, I deem the Landlords served with Notice of the Tenants' dispute, 5 days after mailing on November 5, 2024, as required by section 90 of the Act.

Service of Evidence

The Tenant C.B. referred to a clearly identified and labeled series of documents as their evidence package and testified that the Landlords were both served with copies of these items in the document packages that were served on October 31, 2024.

I therefore deem the Landlords served with copies of the Tenants' evidence as required by the Act and Rules of Procedure and find that I can consider the Tenants' evidence in my decision making.

Issues to be Decided

Are the Tenants entitled to:

- 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

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 parties had a verbal agreement for the Tenants to occupy the house on a larger residential property in exchange for \$1,900.00 a month starting September 1, 2023.

The Tenant C.B. testified that the Tenants travelled to the residential property in August 2023 to meet with the Landlord A.J.S. and discuss the terms of the tenancy agreement, which was month-to-month.

The Tenant C.B. provided proof of a \$1,900.00. Etransfer to the Landlords on August 20, 2023, for payment of a \$950.00 security deposit and a \$950.00 pet damage deposit for the rental unit.

The Tenant C.B. also provided proof of the Tenants paying rent for September and October 2023 in the amount required.

The Tenant C.B. referred to an email sent October 7, 2023, to the Landlord notifying them that the Tenants would be ending their tenancy at the end of October 2023, due to various concerns the Tenants had with the rental unit.

The Tenant C.B. testified that they previously tried to apply to the RTB for return of the security deposits but had not yet served the Landlords by registered mail of the Tenants' forwarding address.

The Tenant C.B. then served the Landlords with Notice of the Tenants' forwarding address by registered mail on August 29, 2024 and testified that proof of tracking for this mailing confirms that that both Landlords collected this package on September 4, 2024.

The Tenant C.B. referred to their evidence Documents #17, #20, #21, and #22 which are emails with the Landlord, where the Landlord repeatedly writes that new tenants are confirmed for November 2023, which the Tenants in this dispute, understood to mean that the Landlords have no claim for compensation for rent against the Tenants in this dispute.

Tenant C.B. stated that they did not authorize the Landlords to retain their deposits.

Tenant C.B. indicated that since filing for this dispute, they became aware of the legal provision within the Act and Regulations for tenants to be repaid double the values of their deposits from the landlord under certain conditions and requested that the Tenants receive back double the value of the deposits under the Act.

Analysis

Are the Tenants entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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.

Based on my review of the prior RTB Decision involving the parties dated September 5, 2024, I find that the Landlords were served Notice of the Tenants forwarding address as required by the Act, on September 5, 2024, because this is the date of service confirmed by the Landlord, in the prior RTB Decision.

As required by 38(1) of the Act, the Landlords made an application to the RTB within 15 days to retain the value of the deposits. However, the Landlords then failed to attend the hearing that occurred on December 2, 2024, and so their claim was dismissed, without leave to reapply as required by the Rules of Procedure and RTB Policy Guideline 17.

I find that the Tenants' \$950.00 security deposit and \$950.00 pet damage deposits that were paid to the Landlord in 2023, are collectively valued at \$1,961.19 at the day of the hearing having earned \$61.19 in interest according to the online RTB security deposit interest calculator.

Since the Landlord did not return the deposit within the time period required by section 38(1) after receiving the Tenants forwarding address and their application to retain the deposits has been dismissed, I find that the Tenants are entitled to double their deposits pursuant to case law guidance of *Nazari v. Kask-Ryan, 2016 BCSC 943* which found that a landlord applying to retain the deposit but then not attending the participatory hearing, activates the doubling provision of 38(6) of the Act.

This doubling provision is set out within section F of RTB Policy Guideline 17.

$\$950.00 + \$950.00 = \$1,900.00 \times 2 = \$3,800.00$

$\$3,800.00 + \$61.19 \text{ (interest)} = \$3,861.19$

I find under section 72 of the Act that the Landlords must pay the Tenants \$3,861.19 for return of their security and pet damage deposits.

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

The Tenants were successful in their application and so I authorize them to recover the filing fee from the Landlords under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$3,961.19** under the following terms:

| Monetary Issue | Granted Amount |
|--|-----------------------|
| a Monetary Order for the Tenant for the return of their deposit(s) from the Landlord | \$3,861.19 |
| Authorization to recover the filing fee | \$100.00 |
| Total Amount Owning to Tenants from Set Off | \$3,961.19 |

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed with leave to reapply.

The Landlord's application to retain all or a portion of the Tenants' security and pet damage deposits is dismissed without 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: December 2, 2024

Residential Tenancy Branch