

## **DECISION**

### **Introduction**

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for money owed or compensation for damage or loss, for compensation for damage to the rental unit, to retain the Tenant's security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for the return of Tenant's security deposit and to recover the fee for filing this Application for Dispute Resolution.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The participants affirmed they would not record any portion of these proceedings.

### **Service of Landlord's Notice of Dispute Resolution Proceeding (Proceeding Package)**

TB stated that on October 26, 2024, the Landlord's Proceeding Package was sent to both CEP and PO to a pre-agreed email address. The Landlord submitted no evidence to corroborate TB's testimony that the parties agreed to exchange documents by email.

CEP and PO both deny receiving the Landlord's Proceeding Package and they both deny agreeing to accept documents by email.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the

absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. As the Landlord submitted no evidence to establish that the Landlord's Proceeding Package was sent by email and there is no evidence to refute the Tenant's testimony that it was not received, I find the Landlord has failed to meet the burden of proving the Proceeding Package was served to the Tenant.

As the Landlord has failed to meet the burden of proving the Landlord's Proceeding Package was served to the Tenant, I am unable to proceed with the Landlord's Application for Dispute Resolution. The Landlord's Application is therefore dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution.

### **Service of Tenant's Notice of Dispute Resolution Proceeding (Proceeding Package)**

CEP stated that the Tenant's Proceeding Package was sent to TB, via registered mail, on November 14, 2024. TB agreed these documents were served to by registered mail, although they were not received until December 22, 2024, due to the mail strike. I find these documents were served in accordance with section 89 of the Act.

As the Landlord received the Proceeding Package at least 14 days prior to this hearing, I find it reasonable to proceed with the hearing.

### **Service of Evidence**

On October 20, 2024, the Landlord submitted evidence to the Residential Tenancy Branch. TB stated this evidence was sent to the Tenant with the Proceeding Package. As the Landlord has failed to establish the Proceeding Package was served to the Tenant, this evidence was not accepted as evidence for these proceedings.

On December 22, 2024, the Landlord submitted additional evidence to the Residential Tenancy Branch. TB stated this evidence was sent to the Tenant, via email, on December 22, 2024. The Tenant denies receiving this email and the Landlord submitted no evidence to corroborate TB's testimony that it was served. I find the Landlord has failed to establish that this evidence was served, for the same reasons the

Landlord failed to establish that the Proceeding Package was served. As the Landlord has failed to establish the evidence was served, it was not accepted as evidence for these proceedings.

In November of 2024, the Tenant submitted evidence to the Residential Tenancy Branch. CEP stated this evidence was sent to the Landlord with the Proceeding Package. TB acknowledged receipt of the evidence and it was accepted as evidence for the proceedings.

### **Issue(s) to be Decided**

Is the Tenant entitled to the return of security deposit?  
Is the Tenant entitled to recover the fee for filing an Application for Dispute Resolution.

### **Background and Evidence**

The Landlord and Tenant agree that:

- the tenancy began on November 01, 2022
- this tenancy ended on September 15, 2024
- the Tenant did not authorize the Landlord to retain the security deposit.

TB stated that the security deposit of \$925.00 was paid in late October of 2022. CEP stated it was paid on November 01, 2022.

TB stated that the the Landlord returned \$30.12 of the security deposit on October 04, 2024. CEP stated it was received on October 05, 2024.

CEP stated that a forwarding address was mailed to the Landlord on October 07, 2024 and that it was delivered on October 21, 2024. TB stated that the forwarding address was received on October 22, 2024.

### **Analysis**

#### **Should the security deposit be returned to the Tenant?**

On the basis of the tenancy agreement submitted in evidence by the Tenant, I find that the Tenant paid a security deposit of \$925.00 on November 01, 2022, which is consistent with CEP's testimony.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the evidence before me, I find that the Tenant's forwarding was received by the Landlord on October 21, 2024 or October 22, 2024. Residential Tenancy Branch records show the Landlord an application to retain the security deposit on October 20, 2024. I therefore find that the Landlord filed their Application for Dispute Resolution within the timeline established by section 38(1) of the *Act*.

As has been previously stated, the Landlord's Application for Dispute Resolution has been dismissed and is not being considered at these proceedings. As such, I am unable to conclude that the Landlord has the right to retain any portion of the Tenant's security deposit.

As the Landlord has failed to establish a right to retain any portion of the Tenant's security deposit, I find that the Landlord must return the Tenant's \$925.00 security deposit, plus interest of \$43.52, less the \$30.12 the Landlord returned on October 04, 2024 or October 05, 2024. (\$938.40)

**Is the Tenant either party entitled to recover the fee for filing an Application for Dispute Resolution?**

I find that the Tenant's Application for Dispute Resolution has merit, and that the Tenant is entitled to recover the fee for filing the Application.

**Conclusion**

The Landlord's Application for Dispute Resolution has been dismissed, with leave to reapply.

I grant the Tenant a Monetary Order for \$1,038.40, which represents the return of the security deposit/interest plus \$100.00 for filing this Application for Dispute Resolution.

The Landlord must be served with this Monetary Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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: January 06, 2025

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Residential Tenancy Branch