

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 unpaid rent under section 67 of the Act
- 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

This hearing also dealt with the Tenant's application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for a monetary loss or money owed under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return 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

At the outset of the hearing, the parties were informed that only the documentary evidence that the parties refer to during the proceeding will be relied on for making the decision in accordance with the Residential Tenancy Branch Rules of Procedure 7.4.

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

The Tenant confirmed service of the Landlord's Notice of Dispute Resolution Proceeding Package and Landlord's evidence.

The Landlord confirmed service of the Tenant's evidence for their application.

The Landlord confirmed service of the Tenant's Notice of Dispute Resolution Proceeding Package's and the Tenant's evidence for both applications.

The Tenant confirmed service of the Landlord's evidence for both their applications.

Preliminary Matters

Landlord's Application - 910177276

Residential Tenancy Branch Rules of Procedure 2.5 provides the following:

To the extent possible, the applicant must submit the following documents at the same time the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, when the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

I find the Landlord did not provide a detailed calculation for their application as required under Residential Tenancy Branch Rules of Procedure 2.5. Therefore, their application for the filing fee is dismissed, without leave to reapply. Their remaining claims are dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Tenant's Application – 910182273

The following claim was severed at the outset of the hearing:

- a Monetary Order for compensation for a monetary loss or money owed under the Act, regulation or tenancy agreement under section 67 of the Act

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states claims made in the application must be related to each other.

Rule 6.2 of the Residential Tenancy Branch Rules of Procedure states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the above claim identified in the application with leave to reapply as this matter is not related and in accordance with Rule 2.3 and Rule 6.2 of the Residential Tenancy Branch Rules of Procedure. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable time limit. The application filing fee is dismissed, without leave to reapply.

Issues to be Decided

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

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

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 testified that this tenancy began on September 1, 2022, with a monthly rent of \$4,000.00, due on the first day of the month. The Tenant paid a security deposit of \$2,500.00 on July 5, 2022.

At the outset of the hearing, the parties confirmed that the Landlord provided to the Tenant the amount of 10000.00 in Chinese Yuan Renminbi on May 17, 2024.

During the hearing, I did the currency conversion from Chinese Yuan Renminbi to Canadian Dollar for the date of May 17, 2024. The conversion of 10000.00 Chinese Yuan Renminbi to Canadian Dollar is \$1,885.14.

Both parties were provided during the hearing, that the current amount owing for the security deposit in Canadian Dollar is \$614.86. The parties did not raise any issue.

The following is undisputed:

- the Tenant provided to the Landlord their forwarding address by email for the return of their security deposit on May 17, 2024

The Tenant testified the following:

- they never provided anything to the Landlord in writing that they could keep the balance of their deposit
- the Landlord's translated messages are incorrect, and they never said in the messages that the Landlord could keep the balance of their deposit

The Landlord testified the following:

- the Landlord's father messaged the Tenant that they were only refunding the Tenant 10000.00 in Chinese Yuan Renminbi and the Tenant replied they could do as they wish

The Landlord provided the following as evidence:

- WeChat message conversations with the Tenant and an unofficial translation of the messages

Analysis

Is the Tenant 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 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.

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 the security 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 deposit or file a claim against the Tenant to retain the security deposit within fifteen days, the Landlord must pay the Tenant double the amount of the deposit.

Both parties testified that the Tenant provided the Landlord their forwarding address by email for the return of their deposit on May 17, 2024.

The Tenant and Landlord both provided different versions of what the WeChat message translations are in English. The Tenant testified that the WeChat messages do not provide that the Landlord could keep the balance of their security deposit, while the Landlord testified that in the WeChat messages their father said they would sent to the Tenant 10000.00 Chinese Yuan Renminbi for their security deposit and the Tenant replied do as you wish. Therefore, I find without a notarized translation by a British Columbia Notary Public, that attests to the accuracy of the translation of the WeChat messages, I am unable to determine what the translation of the WeChat messages are.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord did not provide sufficient evidence to prove that they had the Tenant's agreement in writing to retain the balance of their security deposit.

I find the Landlord was deemed served with the Tenants' forwarding address on May 17, 2024, in accordance with section 44 of the Residential Tenancy Regulation. I further

find that the Landlord was obligated to obtain the Tenant's written consent to keep the balance of their security deposit of \$614.86 or to file an application to retain the balance of the security deposit on or before June 1, 2024, 15 days after receiving the Tenant's forwarding address.

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the balance of the security deposit they are retaining, plus interest, as they have not complied with section 38(1) of the Act.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of the balance of their security deposit doubled, plus interest under section 38 of the Act, in the amount of \$1,259.43.

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 Tenant a Monetary Order in the amount of **\$1,359.43** under the following:

Monetary Issue	Granted Amount
a Monetary Order for the return of the balance of their security deposit doubled, plus interest under section 38 of the Act	\$1,259.43
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$1,359.43

The Tenant is provided with this Order, 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 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: February 3, 2025

Residential Tenancy Branch