

DECISION

Introduction

This hearing dealt with cross applications. The Landlord filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) 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 Tenant under section 72 of the Act

The Tenants filed an Application for Dispute Resolution under the Act for:

- a Monetary Order for return of double the security deposit under section 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 Landlord was represented by an agent.

Both Tenants appeared.

Service of Landlord's Notice of Dispute Resolution Proceeding (Proceeding Package) and evidence

The Landlord sent the proceeding package to Tenant C.D.M. only, via email. The Tenant had consented to service by email on an RTB-51 form. I was satisfied Tenant C.D.M. was sufficiently served with the proceeding package.

The Landlord did not send a proceeding package to Tenant S.C.M. despite having her email address on the RTB-51 form. Therefore, I find Tenant S.C.M. was not served.

The Landlord did not serve any other documents, including a Monetary Order worksheet, or evidence, to the Tenants until minutes before the hearing. The Landlord did not have any reason for the failure to serve the required documents or serve them within the time limits set out in the Rules of Procedure.

Given the insufficient service, the Landlord requested withdrawal of the Landlord's application, with liberty to reapply. The Landlord's request for compensation for damage dismissed with leave to reapply. The Landlord's request for recovery of the filing fee is dismissed without leave to reapply.

The Landlord had also requested authorization to retain the Tenant's security deposit and pet damage deposit. I heard the Landlord is still holding the Tenant's security deposit and pet damage deposit. Residential Tenancy Policy Guideline 17 provides information and policy statements with respect to security deposits, including the following under section F. of the policy guideline:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the RTA, on:
 - a. a Landlord's application to retain all or part of the security deposit; or
 - b. a Tenant's application for the return of the deposit.

unless the Tenant's right to the return of the deposit has been extinguished under the RTA. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the Tenant has applied for dispute resolution for its return.

In keeping with policy guideline 17, I proceeded to hear from the parties to determine whether the Tenants extinguished the right to return of their security deposit or pet damage deposit.

Service of Tenant's Notice of Dispute Resolution Proceeding (Proceeding Package) and evidence

The Tenants sent their proceeding package and evidence to the Landlord via email. The Landlord had executed an RTB- 51 authorizing service by email. The Landlord confirmed receipt of the Tenant's email. I find the Landlord was sufficiently served.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for the return of the security deposit and pet damage deposit? Is the Tenant entitled to doubling of the deposits?

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.

Evidence was provided showing that this tenancy began on April 30, 2023. The Tenants paid a security deposit of \$1,900.00 and a pet damage deposit of \$1,900.00 on April 26, 2023. The Tenants were required to pay rent of \$3,800.00 on the first day of every month. The tenancy ended on January 31, 2025.

The Landlord and Tenants participated in a move-in and move-out inspection together. A move-in inspection report was prepared and signed by the parties; however, a move-out inspection report was not presented to the Tenants for their signature.

The Tenants sent their forwarding address to the Landlord via text message on January 31, 2025. The Landlord acknowledged receiving the text message. The Tenants did not give their forwarding address to the Landlord in any other way before they filed their Application for Dispute Resolution..

The Tenants did not authorize the Landlord to retain any part of their deposits. The Landlord has not refunded any part of the deposits to the Tenants.

The Landlord argued that the Tenants are required to serve their forwarding address to the Landlord by email.

The Tenants argued that communication with the Landlord by text message was commonplace although they acknowledge that they did send their notice to end tenancy to the Landlord via text and email.

Analysis

Did the Tenant extinguish their right to return of the security deposit and pet damage deposit?

Under sections 24 and 36 of the Act, a Tenant extinguishes their right to return of the security deposit and pet damage deposit if they fail to participate in the move-in or move-out inspection with the Landlord despite being given two opportunities to participate.

It is undisputed that the Tenants participated in both the move-in and move-out inspection with the Landlord. Therefore, I find the Tenants did not extinguish their right to return of the deposits.

Considering the Tenants did not authorize the landlord to retain any part of their deposits, the landlord's claim for damage was dismissed with leave, and in keeping with policy guideline (section F. 1.), I order the Landlord to return the security deposit and pet damage deposit, plus accrued interest, to the Tenants. I calculate the interest on the deposits to be \$83.62 as of today's date.

The Landlord may still file an application for damage against the Tenants within the applicable time period; however, the issue of the security deposit and pet damage deposit has now been conclusively dealt with in this hearing.

Is the Tenant entitled to doubling of the security deposit and 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 get the Tenant's written consent to make deductions from the deposit(s), repay the deposit(s) to the Tenant, 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 do one of these things, within 15 days, the Landlord must pay the Tenant double the amount of the deposit(s).

The 15-day time period starts counting on the later of two dates: the date the tenancy ends, or the date the written forwarding address is given to the Landlord.

In this case, the tenancy ended on January 31, 2025; however, I find the Tenants did not give their forwarding address in writing to the landlord in a manner that complies with section 88 of the Act. Under section 88 of the Act, a document is considered given when it is served in one of the ways permitted under section 88 of the Act. Text messaging is not a recognized or permissible method of service under section 88 of the Act. Email is a permissible method where the recipient has provided an email address for purposes of service. The Landlord had provided the Tenants with an email address to use for service, but the Tenants did not use email to give the Landlord their forwarding address like they did when they gave their notice to end tenancy. While I appreciate that text messaging is a convenient and common method of communication, some documents need to be given in a more formal manner to be effective and trigger an event, especially when there is a consequence attached to non-compliance, such as doubling of a deposit.

For the above reasons, I find the Tenants are not entitled to doubling of their deposits because they did not give their forwarding address to the Landlord, in writing, in a permissible manner, prior to filing their Application for Dispute Resolution. Accordingly, I find the Tenants filed their Application for Dispute Resolution prematurely.

Where a party files an Application for Dispute Resolution prematurely, they will often be granted leave to reapply; however, I find it unnecessary to do so in this case because I have ordered return of the deposits to the Tenants under the Landlord's Application for Dispute Resolution and the issue of the deposits is now considered resolved.

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

As the Tenant's application was filed prematurely, and their deposits were resolved under the Landlord's Application for Dispute Resolution, I make no award for recovery of the filing fee paid by the Tenants.

Conclusion

The Landlord's claim for damage is dismissed with leave to reapply. The Landlord's request for recovery of the filing fee is dismissed without leave.

The Landlord's request for authorization to retain the tenant's deposits is dismissed without leave to reapply and the Tenant is provided a Monetary Order for return of the deposits, plus interest, in the amount of **\$3,883.62** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for return of the security deposit and pet damage deposit (in the single amount)	\$3,800.00
Accrued interest on the security deposit and pet damage deposit	\$83.62
Total Amount	\$3,883.62

The Tenant is provided with this Order in the above terms to serve and enforce upon the Landlord. 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).

The Tenant's application for doubling of the deposits is denied and dismissed without leave. The Tenant's request for recovery of the filing fee they paid for their application is dismissed without leave.

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: May 2, 2025

Residential Tenancy Branch