

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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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

Landlord L.H. attended the hearing for the landlord.

Tenant M.B. attended the hearing for the tenant.

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

The parties attended the hearing at the appointed date and time. At the start of the hearing the Tenant confirmed receipt of the Landlord's Application and documentary evidence. I find that these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenant stated that she sent her documentary and digital evidence to the Landlord by regular mail. The Landlord stated that she could not recall if she received the evidence. The Tenant stated that she did not submit any proof of service in support. As the Tenant provided no proof of service, and the Landlord did not confirm receipt, I find that I cannot find that the Landlord is deemed to have received the Tenant's evidence. As such, the Tenant's evidence will not be considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

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 and agreed to the following; the tenancy began on November 26, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$1,500.00 to the Landlord each month. The Tenants paid a security and a pet damage deposit totaling \$1,500.00, which is currently being held by the Landlord. The tenancy ended on September 1, 2022. The Tenant provided their forwarding address in writing to the Landlord which was included in the condition inspection report. The Landlord confirmed receipt of the Tenant's forwarding address on September 1, 2022.

The Landlord is seeking a monetary order relating to damage, compensation, or loss. The Landlord provided a monetary order worksheet containing their claims, which has been reproduced below;

The Landlord is claiming \$173.38 and \$66.89 for unpaid utilities. During the hearing, the parties confirmed that the parties had previously agreed that the Landlord was permitted to retain these amounts from the Tenants' deposits held.

The Landlord is claiming \$1,200.00 for repainting walls in three bedrooms and \$285.00 for the paint needed to paint the bedrooms. The Landlord is claiming a further \$1,200.00 for repainting the baseboards in the rental unit, and \$285.00 for paint needed to paint the baseboards.

The Landlord stated that the Tenants requested to repaint portions of the rental unit. The Landlord stated that they granted the Tenants permission to paint two bedrooms but requested that the paint colour be pastel. The Landlord stated that the Tenants painted the rental unit white and that there was a mismatch in colour, poor application of the paint, and the Tenants painted most of the rental unit. The Landlord stated that they received a verbal quote over the phone for painting services and paint needed. The Landlord stated that she had the rental unit painted last week but did not provided evidence on support.

The Tenant stated that they painted a neutral white colour that could be easily painted over. The Tenant stated that they were provided permission to paint and that there were already patches of paint on the walls, which is why the Tenants wanted to paint over them.

The Landlord is claiming \$87.00 to replace a horse blanket. The Landlord stated that the Tenants borrowed the blanket to cover a load they were taking to the dump. The Landlord stated that the Tenants threw the blanket on the ground which was later covered with snow and damaged. The Tenant denied that the blanket was left in the snow and stated that the Landlord continued to use the blanket afterwards.

The Landlord is claiming \$172.50 to replace a dining room chair set. The Landlord stated that one of the chairs belonging to the Landlord was damaged by the Tenant or their cat during the tenancy. The Tenant denied being responsible for damaging the chair. The Landlord stated that they have not yet replaced the chair, but provided a screen shot of the replacement cost for a similar chair set.

The Landlord is claiming \$500.00 to replace a cow skull. The Landlord stated that the Tenants or their guest took the skull on moving day. The Landlord stated that one week before the Tenants vacated the rental unit, the Landlord had moved the skull to the garden closest to the Tenants' entrance. The Landlord stated that no one else attended the property, therefore, it is most likely the Tenants or their guests that are responsible for taking it. The Tenant denied that she or anyone else took the skull. The Landlord estimated the value of the skull to be \$500.00 but has not yet purchased a new one.

If successful, the Landlord is seeking to retain the Tenants' deposits and for the return of the filing fee.

The Tenant stated that the Landlord has applied late to retain the Tenants' deposits. The Landlord stated that she is seeking an extension based on extenuating circumstances given she was grieving the loss of a close friend at the time that the tenancy ended.

Analysis

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord is claiming \$173.38 and \$66.89 for unpaid utilities. During the hearing, the parties confirmed that the Landlord was permitted to retain these amounts from the Tenants' deposits held. As such, I find that the Landlord is entitled to retain **\$240.27** from the Tenants' deposits.

The Landlord is claiming \$1,200.00 for repainting walls in three bedrooms and \$285.00 for the paint needed to paint the bedrooms. The Landlord is claiming a further \$1,200.00 for repainting the baseboards in the rental unit, and \$285.00 for paint needed to paint the baseboards.

I find that the quotes provided by the Landlord were handwritten by them based on a phone call conversation they had with someone. I find that the Landlord has provided insufficient evidence to demonstrate they suffered a loss, or evidence to support the value of their loss. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$87.00 to replace a horse blanket. I find that the Landlord provided insufficient evidence to demonstrate that they suffered a loss or the value of that loss. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$172.50 to replace a dining room chair set. I find that the Landlord provided insufficient evidence to demonstrate that they suffered a loss as they have not replaced the chair. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$500.00 to replace a cow skull. I find that the Landlord provided insufficient evidence to demonstrate that they suffered a loss or the value of that loss. As such, I dismiss this claim without leave to reapply.

As the Landlord was unsuccessful with the claims that were not agreed upon, I find that they are not entitled to the return of the filing fee.

Is the landlord 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. As the forwarding address was provided on September 1, 2022, and the landlord made their application on November 10, 2022, I find that the landlord did not make their application within 15 days of the tenancy ending/the forwarding address being provided.

I accept that the Tenant agreed to the Landlord retaining \$240.27 for utilities. As there is no evidence before me that the Landlord was entitled to the remaining balance of the security and pet damaged deposits under sections 38(3) or 38(4) of the Act, I find pursuant to section 38(1) of the Act, that the Landlord had until September 16, 2022, to repay the remaining deposit or make an application for dispute resolution. The Landlord

did not submit their Application until November 10, 2022 which is far beyond the time limit permitted under Section 38 of the Act. While the Landlord requested an extension of the time limit, I find that there are no provisions under the Act that allows such an extension.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double of the remaining amount of security deposit paid to the Landlord.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the arbitrator double the remaining amount of security deposit after the agreed upon deduction ($\$1,500.00 - \$240.27 = \$1,259.73$; $\$1,259.73 \times 2 = \$2,519.46$) to determine the amount of the monetary order.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$2,519.46.

Conclusion

The Landlord breached Section 38 of the *Act*. The Tenants are granted a monetary order in the amount of \$2,519.73. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 23, 2023

Residential Tenancy Branch