



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding RA REALTY ALLIANCE INC.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing convened on July 27, 2023, in response to cross applications (application) of the parties seeking remedy under the Residential Tenancy Act (Act).

The landlord filed an application for compensation for a monetary order for unpaid rent, alleged damage to the rental unit by the tenant, authority to keep the tenant's security deposit and pet damage deposit to use against a monetary award and recovery of the filing fee.

The tenant filed an application for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and recovery of the filing fee.

The parties attended and were affirmed. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The hearing proceeded and continued for 55 minutes and the matters in the tenant's application were fully considered. The hearing was adjourned. An Interim Decision was made on July 30, 2023, which should be read in conjunction with this Decision and is incorporated herein by reference.

The same parties attended the reconvened hearing and the landlord's application was heard.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant as claimed in their application and recovery of the filing fee?

Is the tenant entitled to monetary compensation from the landlord as claimed in their application and recovery of the filing fee?

Background and Evidence

The evidence taken showed that this tenancy began on October 1, 2018, and ended on August 31, 2022, monthly rent was \$5000, and the tenant paid a security deposit and pet damage deposit of \$2500 each (collectively, the “deposits”). The landlord has retained the deposits, making this an issue in their application.

Tenant’s application -

The evidence showed that the landlord’s agent issued the tenant a 2 Month Notice, which was dated June 8, 2022, and listed an effective date of August 31, 2022. The tenant vacated in response to the 2 Month Notice on the effective date.

The reason for ending the tenancy stated on the Notice was that the rental unit will be occupied by the landlord or the landlord’s spouse. Filed in evidence by the landlord was the 2 Month Notice.

The tenant’s monetary claim is \$60,000, equivalent of 12 times the monthly rent of \$5000 payable under the tenancy agreement for receiving the landlord’s 2 Month Notice.

The tenant wrote in their application the following, in part:

The reason provide for this action was that the landlord intended to return from China to reside in the property. My observation of the property subsequent to my eviction notice, including driving by at all hours of the day and night, revealed no indications of occupancy such as garbage cans at the curb or interior lights on at night. The property is not listed for sale with a sign on the lawn as early March 2023.

In response to the tenant's claim, the landlord's agent proceeded first in the hearing.

The landlord's agent, AJ, testified to the following: The landlord intended on moving into the residential property upon their return from China, but their husband's life threatening medical condition made that impossible. The landlord's husband was diagnosed with lung cancer in June 2022 and began receiving the cancer treatments in July 2022, in China. Because of the life-threatening condition, the landlord had to focus on their husband's health due to urgent medical intervention.

The landlord filed their husband's medical records, with translation. The records show that the landlord's husband underwent surgery in July for lung cancer, and during the post operative procedure, it was discovered that the landlord's husband also had an intracranial aneurysm, necessitating a second surgery, which took place from September 5 to 11th.

The landlord submitted that they were planning on returning to and moving into the residential property as their daughter was expecting another child and they wanted to be close in order to help with their grandchild. The agent confirmed that the landlord never moved into the rental unit, and is now living with their daughter to help with the child. The agent submitted that the home sat empty for 6 months, and then was placed for sale.

Tenant's response

The tenant testified to the following: They are confused about the landlord's evidence as they tried to get more time to move out of the rental unit, but the landlord denied the request. In an email, the landlord's agent said they had confirmed flights from China. The landlord knew in 2021 the landlord was not planning on moving back and after sitting empty, the rental unit is now being used for AirBnB.

In a written statement, the tenant stated the following, reproduced in part:

In April 2021, the owner decided to list the property for sale. In an email from the owner she stated that they are certain about their families future plans which did not include Canada as they live in China as well as owning property in the US. •Cooperation during sale: I fully cooperated with the realtor by cleaning and presenting the 5800 sq ft, 6-bedroom, 5-bathroom home and yard for the 3 hour mid-week showings. Just vacuuming a house of this size takes an hour. Making beds, cleaning washrooms, cutting lawn etc. I would spend the morning preparing the house and then take the family

out for three hours during the showing. I would have to make up for lost work hours on the weekend. This went on for 6 months!

...

(landlord's agent first name) reminds me that the owners are coming back and need me out as scheduled.

Property manager's email: On August 15th, the property manager emailed me to confirm the requirement to vacate the home by August 31st as the owners had booked their flights for traveling and wanted confirmation.

Filed in evidence were witness letters providing their opinion on whether the landlord moved into the rental unit, photos of text messages and the couch.

Landlord's application –

The landlord's monetary claim was listed in their application as \$13,573.84. The monetary order worksheet filed by the landlord detailed the claim as follows: unpaid rent for July for \$5000, unpaid rent balance of \$6120, unpaid utility of \$825, carpet cleaning of \$660, house cleaning of \$708.75, and junk removal of \$260.

As to the unpaid rent for July and a rent deficiency of \$6120, the landlord submitted that the tenant failed to pay the monthly rent for July and that beginning in January 2021, the tenant began owing rent, as they did not pay their full obligation. The tenant was given a rent deferral agreement, but did not sign the document. The landlord submitted a spreadsheet showing the accounting of rent payments since January 2021 to prove the outstanding balance.

As to the unpaid utility charges, the landlord submitted that the utilities were in the landlord's name and the tenant was given a copy of the bills. The tenancy ended with the tenant owing the amount of \$825, through August 23, 2022, as reflected in the utility statement filed in evidence.

As to the remaining claims, the landlord submitted that they tried to arrange a move-out inspection with the tenant, but the tenant failed to attend and did not respond when trying to arrange a time agreeable with the tenant.

The landlord submitted that the carpet was stained and dirty, and not shampooed. As a result, the landlord provided a professional cleaning.

As to the cleaning claim, the landlord submitted that the tenant did try to do a cleaning, but did not finish the job properly. There was a paint spill in the garage.

As to the junk removal claim, the landlord said that they removed the furniture that was in the rental unit at the beginning of the tenancy for the tenant's use, but that the furniture was so damaged, it was not worth keeping. The landlord submitted they removed a recliner and love seats.

The landlord filed receipts, photos, and a move-in and out condition inspection report (Report).

Tenant's response –

As to the landlord's claim for unpaid rent of \$5000, the tenant said they did not have the money to pay the rent as they needed a down payment on another home and to pay moving expenses.

As to the landlord's claim for the unpaid rent deficiency of \$6120, the tenant submitted that during Covid, they lost a lot of income, and did their best to pay. The tenant agreed the landlord allowed them to pay an extra \$500, but did not have the funds, further telling the landlord they could not pay at all if evicted.

As to the landlord's claim for unpaid utility charges, the tenant submitted they did not have the funds.

The tenant said that when trying to arrange the move-out inspection, the agent only texted and said they were finished. Apart from that, they had cleaned the rental unit and also had cleaners assisting. The only room they did not get around to cleaning was their son's bedroom. The tenant submitted statements from 2 people verifying they cleaned the rental unit.

The tenant said that they had the carpets shampooed in 2021, and provided the receipt.

The tenant acknowledged that there was a paint spill in the garage, as it was simply an accident in moving.

As to the furniture left behind, they left those pieces in the home as they belonged to the landlord. The tenant denied damaging the furniture and had even spoken to the agent

during the tenancy, as the couch began degrading during their use. The tenant said that the couch was not leather, but rather a cheaper material and simply kept peeling off during the tenancy. The tenant submitted they used the furniture as intended and any issues were from reasonable wear and tear.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's application –

The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse intends in good faith to occupy the rental unit.

Section 51(2) provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

The undisputed evidence is that neither the landlord nor landlord's spouse ever moved into the rental unit and that it was listed for sale 6 months after the tenancy ended. For this reason, I find the landlord must pay the tenant the amount of \$60,000, the equivalent of 12 times the monthly rent of \$5000.

However, Section 51(3) of the Act authorizes the Director to excuse the purchaser from paying the tenant the equivalent of 12 times the monthly rent if, in the Director's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Tenancy Policy Guideline 50E outlines circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

The 2 Month Notice was served to the tenant on June 8, 2022, listing a move-out date of August 31, 2022.

Upon consideration of the landlord's medical records evidence, I find that the landlord's husband was diagnosed with lung cancer in June 2022 and underwent surgery in July 2022. Further, I find the landlord submitted sufficient evidence to show that in September, the landlord's husband was further diagnosed with an intracranial aneurysm, requiring further surgery.

While the tenant argues that as late as August 2022, they were told the landlord still intended on moving into the residential property, I find the further diagnosis was not until September 2022, which I find further interfered with the landlord and spouse from returning to the area.

In these circumstances, I find the landlord submitted sufficient evidence to show that the matters relating to husband two serious diagnoses could not be anticipated and were outside the landlord's control. I find it reasonable that the landlord's husband would stay in China to undergo the surgery and treatment, and the landlord would stay with him during the time of a medical crisis.

I find that two life-altering medical diagnoses constitutes significant medical circumstances.

Under the circumstances, I find there was no evidence that the landlord simply changed their mind about moving into the rental unit.

For the above reasons, I find the landlord has met the burden of proof to support on the balance of probabilities, that the landlord had Extenuating Circumstances under section 51(3) of the Act. I therefore excuse the landlord from paying the amount required under subsection (2) of section 51 of the Act.

As a result, I **dismiss** the tenant's application for monetary compensation and for recovery of their filing fee, without leave to reapply.

Landlord's application –

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

July 2022, unpaid rent, total rent deficiency and unpaid utility charges –

I find the landlord submitted sufficient evidence that the tenant owed the monthly rent and utilities under the written tenancy agreement and did not pay the amount claimed. This was undisputed by the tenant.

For this reason, I find the landlord established a monetary claim of \$5000 for unpaid rent for July 2022, \$6120 for a rent deficiency during the tenancy, and the unpaid utility charges of \$825.09, for a total of **\$11,945.09**.

Carpet cleaning –

Under Tenancy Policy Guideline 1, a tenant is, "*Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.*"

In this case, although the tenant cleaned the carpet during the tenancy, this was in 2021. Pursuant to the Policy, I find the tenant should have steam cleaned or shampooed the carpets at the end of the tenancy and did not. Having reviewed the landlord's photographic evidence, I find the carpets required cleaning.

I find the landlord has established a monetary claim of \$660, as shown by their documentary evidence.

Cleaning –

As to the costs claimed by the landlord associated with cleaning and repairing, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I have reviewed the landlord's photographic evidence and in consideration of the rental unit being a 5800 s.f. home with 6 bedrooms and 5 bathrooms, I find the tenant left the rental unit reasonably clean. The landlord's photographs were taken at close range, and the landlord failed to provide photographs which would show that overall the tenant did not leave the rental unit reasonably clean. For instance, one photograph showed a paper bag, a rubber mat and a small box in a cabinet. However, the cabinet was overall left reasonably clean.

In considering the above, I do not find the landlord's receipt showing 3 people worked for 30 hours to clean the home to be reasonable. For this reason, I find the tenant complied with their obligation to leave the rental unit reasonably clean and that the landlord's claim as shown by the receipt to be unreasonable.

I **dismiss** the landlord's claim for \$708.75, without leave to reapply.

I acknowledge that the tenant left an unintentional paint spill in the garage, however, I do not award the landlord an amount for the clean up as the landlord's documentary evidence failed to show how much time was spent on this one item.

Junk removal –

The landlord, from my viewing of the evidence, shows that this claim was for the removal of the landlord's furniture from the rental unit. The tenant submitted they left this furniture as it belonged to the landlord and during the tenancy, they spoke to the landlord about the deterioration of the furniture.

I do not find the tenant was responsible for the removal of the landlord's furniture and as a result, I **dismiss** the landlord's claim of \$260, without leave to reapply.

Due to their successful application, I grant the landlord recovery of their filing fee of **\$100**.

I grant the landlord a **monetary award of \$12,705.09**, comprised of **\$5000** for unpaid rent July 2022, **\$6120** for a total rent deficiency during the tenancy, **\$825.09** for the unpaid utility charges, **\$660** for carpet cleaning, and recovery of the filing fee of **\$100**.

As of this date, the tenant's security deposit of \$2500 paid on September 1, 2018 has accumulated interest of \$43.01, and the tenant's pet damage deposit of \$2500 paid on September 30, 2018, has accumulated interest of \$42.97.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit, with interest, and the pet damage deposit, with interest, in partial satisfaction of the monetary award. With interest to date, the tenant's security deposit is \$2543.01 and the tenant's pet damage deposit is \$2542.97.

Conclusion

I issue a monetary order of **\$7619.11** in favour of the landlord as follows:

ITEM	AMOUNT
1. Unpaid rent	\$5000.00
2. Rent deficiency	\$6120.00
3. Unpaid utility charges	\$825.09

4. Carpet cleaning	\$660.00
5. Filing fee	\$100.00
6. <i>Less security deposit, interest</i>	<i>(\$2543.01)</i>
7. <i>Less pet damage deposit, int.</i>	<i>(\$2542.97)</i>
TOTAL	\$7619.11

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order as soon as possible to be enforceable. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that 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 *Residential Tenancy Act*.

Dated: November 17, 2023

Residential Tenancy Branch