

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

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

- A Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- Authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Preliminary Matters

- Tenant's Evidence

The parties advised that the Tenant did not serve the Landlord with their evidence. Per Rule of Procedure 3.17, I am excluding the Tenant's evidence from consideration as the Landlords never received it. The Tenant was advised they could provide oral testimony about the evidence.

- Amend Tenant's Application

The Tenant filed an application requesting the return of their security deposit and within that claim that asked for additional compensation claims; however, the Tenant did not include an application for compensation. The Notice of Dispute Resolution served by the Tenant on the Landlord clearly indicated the amounts the Tenant was seeking and what they were for. I find that the Landlord was aware of the claims against them. As such, I amend the Tenant's application to include a claim for a monetary order for monetary loss or money owed.

- Updated Landlord's Name

Updated Landlord's name to legal name.

Issues to be Decided

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

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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

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.

Evidence was provided showing that this tenancy began on February 1, 2023, with a monthly rent of \$950.00, due on first day of the month, with a security deposit in the amount of \$475.00. This tenancy was for a fixed term tenancy until May 31, 2023, but the tenancy ended on April 30, 2023. The parties advised the Landlord received the Tenant's forwarding address on April 27, 2023.

The Landlord is seeking to retain the security deposit and for compensation for the loss of rental income. The Tenant filed a cross application seeking the return of their security deposit and monetary compensation.

The Landlord's Compensation Claim

The Landlord argued that around April 15, 2023, the Tenant advised they wanted to end the tenancy early on April 30, 2023. The Landlord advised they were okay with the Tenant ending the tenancy early but that the Tenant's actions prevented them from being able to re-rent the rental unit. The Landlord argued the Tenant only agreed to allow the Landlord to show the rental unit to potential tenants twice, which resulted in the Landlord not being able to re-rent the rental unit until around May 15, 2023. The Landlord provided text messages to support their claim. The Landlord is seeking to retain the security deposit as satisfaction for their loss of rental income for two weeks.

The Tenant argued they allowed the Landlord to show the rental unit to potential tenants and never prohibited the Landlord from showing the rental unit. The Tenant advised that one time they requested a different time for a showing and the Landlord agreed.

The Tenant's Compensation Claim

The Tenant is seeking the return of their security deposit and compensation for their rent for February 2023, March 2023 and April 2023 and their moving expenses, because of the inconvenience and stress of living in the rental unit. The Tenant argued when they agreed to rent the rental unit, they were to have a shared bathroom with another tenant and access to kitchen in the basement. The Tenant advised that a city inspection took place in March 2023 and the Landlord closed in the bathroom and removed the kitchen in preparation for the city inspection. Next, the Tenant advised they were required to move to the main floor for two nights while the inspection took place. The Tenant advised the same thing happened in April 2023 when the city came to inspect again. The Tenant argued they were required to use a different kitchen and bathroom on the main floor and share with other tenants. The Tenant also argued they had their locks removed from their rental unit. The Tenant advised that no construction, or loss of access to the bathroom or kitchen occurred in February 2023.

The Landlord argued the tenant always had access to a kitchen and bathroom it was just changed to the main floor. The Landlord also argued they reduced rent for April 2023 for the inconvenience of moving the kitchen and bathroom.

The Tenant is also seeking \$119.94 for moving fees. The Tenant argued they had to move out of the rental unit early due to the inconvenience of living in the rental unit. The Tenant advised they had to rent a U-Haul to help with the move. The Tenant did not provide any receipts to support their claim.

The Landlord argued they are not responsible for the moving fees since it was the Tenants decision to move.

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.

As stated in Policy Guideline #5, when a tenant ends a tenancy before the end of the date of the tenancy agreement, the landlord has a duty to minimize the loss of rental income, which typically means re-renting the rental unit as soon as possible.

The Landlord is seeking the loss of rental income for not being able to re-rent the rental unit until May 15, 2023, because the Tenant did not allow showings. However, I find that the Landlord has not established that they mitigated their loss. The Landlord argued they posted the rental unit for rent right away but did not provide any evidence to support this. As such, they have not established element number 4 required to prove a loss.

For the above reasons, the Landlord's application for a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Tenant 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.

I decline to award the Tenant the cost of their moving fees as they have not provided the receipt to support the amount they are claiming. As such, the Tenant has failed to establish element number 3 required to prove a loss.

I decline to award the Tenant rent for February 2023 since the Tenant testified that during February 2023 there was no construction and they had access to the bathroom and kitchen in their rental unit. As such, I find that no loss existed.

The Tenant has also requested \$950.00 rent for March 2023 and \$900.00 rent for April 2023. As a result of the two city inspections in March 2023 and April 2023, the Tenant lost access to the bathroom and kitchen in the rental unit as was required to use the kitchen and bathroom located on the main floor. However, the Tenant still had access to a bathroom and kitchen during their tenancy. While it was inconvenient to use the bathroom and kitchen located on another level, I do not find that the Landlord violated the Act, regulation or tenancy agreement. As such I decline to award the full amount of rent for March and April 2023. Additionally, I find that the Tenant was provided with a

reduction of rent for April 2023 to account for the inconvenience of moving the kitchen and bathroom.

For the above reasons, the Tenant's application for a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenants' 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 April 27, 2023 the tenancy ended April 30, 2023 and the Landlord made their application on May 3, 2023, I find that the Landlord did make their application within 15 days of the tenancy ending.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 and 36 of the Act because extinguishment only relates to claims for damages to the rental unit and the Landlord only requested to retain the security deposit for compensation and not damages.

As the Landlord filed an application to retain the security deposit within 15 days of the Tenant moving out, the Landlord is not required to pay double the security deposit. However, as I have declined to award the Landlord their monetary compensation the Tenant is entitled to the return of their security deposit. Pursuant to section 4 of the Regulations, the Tenant is also entitled to \$7.61, which is the interest accumulated on the security deposit since February 2023.

Therefore, I find the Tenant is entitled to a Monetary Order under sections 38 and 67 of the Act, in the amount of \$482.61.

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

As the Landlord was not successful in their application, I decline to award them the filing fee.

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

As the Tenant was partially successful in their application, I find that the Tenant is entitled to recover the \$50.00 from the filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the tenant a Monetary Order in the amount of **\$532.61** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$475.00
interest accumulated pursuant to section 4 of the Regulation	\$7.61
authorization to recover the filing fee for this application from the landlord under section 72 of the Act	\$50.00
Total Amount	\$532.61

The Tenant is provided with this Order in the above terms 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 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 Act.

Dated: November 27, 2023

Residential Tenancy Branch