

## **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 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 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 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 Not Served

The Landlord's agent KH (the "Landlord's Agent") advised they never received the Tenant's evidence. Per Rule of Procedure 3.17, I am excluding the Tenant's evidence from consideration as the Landlords never received it. The Tenant advised they would rely on the text message evidence submitted by the Landlord as this was the same evidence they were going to use.

### **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for unpaid rent?

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?  
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 recover the filing fee for this application from the Landlords?

## **Background and Evidence**

This tenancy began April 10, 2023, with a rent of \$7,000.00 due on the first of the month and a security deposit of \$3,500.00. The Landlord's position is that the tenancy ended April 27, 2023, and the Tenant's position is that the tenancy never began, and they never gained access to the rental unit. The parties agree the Tenant provided their forward address April 28, 2023, by email.

The Landlord is seeking \$17,500.00 for loss of rent from May 1, 2023 to July 15, 2023 and \$500.00 in compensation. The Tenant filed a cross application seeking the return of their \$3,500.00 security deposit and the \$3,500.00 they paid in rent for half of April 2023.

The parties advised the rental unit is in an exclusive building that requires prior strata counsel approval before a tenancy can be entered into and finger printing to access the rental unit. The Tenant received approval from the strata counsel on April 5, 2023, and the tenancy agreement was signed by the parties on April 6, 2023, with the tenancy to start April 10, 2023; however, the Tenant never moved into the rental unit. On April 24, 2023, the Tenant paid the \$3,500.00 security deposit in cash and e-transfer \$3,500.00 to cover half April 2023 rent was sent April 25, 2023.

### Landlord's Claims

The Landlord is seeking the following amounts:

1. \$17,500.00 for Loss of Rent

The Landlord's Agent argued that after the Tenant decided not to move forward with the Tenancy on April 27, 2023, the Landlord was unable to re-rent the rental unit until July 15, 2023. The Landlord is seeking \$17,500.00 for the loss of rent from May 1, 2023, to July 15, 2023. The Landlord's Agent argued the rental unit was posted right away after the Tenant decided not to move forward with the tenancy. The Tenant advised that throughout April 2023 the rental unit was still posted for rent. Strata approval for the new tenant was approved June 7, 2023, with a move in date of July 15, 2023. An email supporting this claim was submitted into evidence.

2. \$500.00 Strata Approval Charge

The Landlord is seeking the \$500.00 they had to pay to the strata counsel when the Tenant submitted their application to be approved for the rental unit. The Landlord paid this fee on behalf of the Tenant and the Landlord's Agent argued they are now seeking

compensation since the Tenant did not move in and the Landlord was required to pay another \$500.00 fee for the new tenant. The Landlord submitted the strata counsel bylaw in support of this claim.

The Tenant argued that on April 25, 2023, they went to the concierge to setup their fingerprint and book the elevator to move into the rental unit, but they were informed it would take 2 additional weeks to gain access to the rental unit and they were required to pay \$5,000.00 to the strata counsel as an additional security deposit. The Tenant argued they were not made aware of any of these requirements. The Tenant argued they decided not to move forward with the tenancy because they had to find a place to live for 2 weeks before they would be able to gain access to the rental unit, which was not feasible.

The Landlord's Agent argued no additional \$5,000.00 is required, the Tenant only had to pay a \$400.00 move in fee and \$100.00 per fingerprint to the strata counsel. The Landlord's Agent also argued the Tenant only needed to book the elevator to be able to move into the rental unit, which is available whenever there is an opening, usually it only takes a couple of days.

#### Tenant's Claim

The Tenant is seeking the return of the \$3,500.00 security deposit and the \$3,500.00 they paid for half month's rent for April 2023. The Tenant argued they never moved into the rental unit.

The Landlord's Agent argued the tenancy agreement states the tenancy began April 10, 2023, and the Tenant kept delaying paying the security deposit and moving in because they were out of town. The Landlord argued they negotiated with the Tenant to only pay \$3,500.00 for April 2023 rent.

## **Analysis**

### **Is the Landlord entitled to a Monetary Order for unpaid rent/and or utilities?**

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.

Based on the submissions and evidence of the parties, I find that there was a fixed term tenancy agreement until April 30, 2024, and the Tenant indicated they would not be moving forward with the tenancy on April 27, 2023. While the Tenant did not move into the rental unit, the tenancy agreement stated the tenancy began April 10, 2023. The rental unit was not re-rented until July 15, 2023.

Based on both parties' testimony and the tenancy agreement, I find that as a consequence of the Tenant ending the tenancy contrary to the Act the Landlord suffered a loss of rental income for the months of May 1, 2023 to July 15, 2023 in the total amount of \$17,500.00 (2.5 times \$7,000.00).

Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

While the Landlord's Agent argued they posted the rental unit for rent on multiple sites including a rental board and the MLS site, no evidence was provided to support this. The Tenant did advise that the rental unit was never taken down from the rental site even after they signed the tenancy agreement. The Tenant advised that the rental unit remained active throughout April 2023 and listed the rental unit for the same amount of rent. As such, I find there is some corroboration from the Tenant that the Landlord did post the rental unit. I find that there has been partial mitigation and I award the Landlord a portion of their claim but not all.

Based on the above, I award the Landlord \$7,000.00 for one month of compensation for loss of rental income.

**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.

Based on both parties' testimony and the tenancy agreement, I find that as a consequence of the Tenant ending the tenancy contrary to the Act the Landlord suffered a loss by having to pay an additional \$500.00 strata counsel fee for the new tenant. I find that the Landlord provided proof of the amount required to compensate by providing the strata counsel bylaw and there was no way for the Landlord to mitigate their loss and the fee is required before the strata counsel will approval a new tenant.

Therefore, I find the Landlord is entitled to a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$500.00.

**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 by the Tenant April 28, 2023, and the Landlord made their application on May 5, 2023, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

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 the unpaid rent and compensation. No claims for damages were made.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposits of \$3,500.00 plus interest, in partial satisfaction of the monetary award for the unpaid rent and compensation. The interest accumulated is \$45.44

The Tenant is seeking the return of the \$3,500.00 paid for half month rent of April 2023. While the Tenant did not move into the rental unit, they signed a tenancy agreement that stated the tenancy began April 10, 2023. As such, even though the Tenant had not moved into the rental unit the tenancy began on April 10, 2023. Based on the above, the Tenant is not entitled to the return of the \$3,500.00 paid for half of April 2023 rent.

**Is the Landlord or Tenant entitled to recover the filing fee for their application from?**

As the Landlord was partially successful in their application, I find that the Landlord is entitled to recover the \$50.00 filing fee paid for this application under section 72 of the Act. As the Tenant was not successful, I decline to award the Tenant their filing fee.

## Conclusion

I grant the landlord a Monetary Order in the amount of **\$4,004.56** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for compensation to the rental unit or common areas under sections 32 and 67 of the Act	\$500.00
a Monetary Order for unpaid rent under section 67 of the Act	\$7,000.00
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	-\$3,545.44
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$50.00
<b>Total Amount</b>	<b>\$4,004.56</b>

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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 Act.

Dated: November 29, 2023

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Residential Tenancy Branch