

DECISION

Introduction

This hearing dealt with Cross Applications including:

The tenant's June 21, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the landlord to return the tenant's personal property under section 65 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The landlord's August 2, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for compensation for loss or other money owed under the Act, regulation or tenancy agreement under section 67 of the Act
- An order to retain all or part of the tenant's security deposit
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Preliminary Matters

The hearing started at 1:30PM. All parties attended the call for their respective applications. The tenant then left the call at 1:50PM, and proceedings were paused for five minutes to allow the tenant to return. However, the tenant did not return and so the hearing proceeded at 1:55PM. I dismissed the tenant's application, with leave to reapply, under RTB Rule of Procedure 7.3.

I reviewed the landlords' claim for compensation. Based on the evidence and testimony provided, I find that the landlord submitted two claims for loss or other money owed. I therefore removed the landlord's claim for damages under Rule of Procedure 7.7 and consolidated the two amounts claimed by the landlord within a single category.

Service of Notice and Evidence

The landlord provided proof of service by registered mail to the tenant on September 1, 2023. The tenant confirmed that the address used for service was an address they provided. However, the tenant stated they never received the landlords' information package because the address provided was not actually the tenant's address. It was a friend's address.

I compared the mailing address provided by the tenant against the mailing address used by the landlord to serve the tenant. After confirming these are the same address, I deem the tenant served with Notice of the landlord's claim on September 6, 2023, under 90(a) of the Act.

Issue(s) to be Decided

Landlord

- Is the landlord entitled to a Monetary Order for money owed or compensation for 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

The landlord purchased the multi-unit residential property in December 2021. They denied having a tenancy agreement with the tenant. The landlord provided proof of a written tenancy agreement with the tenant's mother that started in 2006. The landlord stated that they have record of a \$435.00 security deposit collected from the tenant's mother. The tenant indicated during the hearing, that their mother is now deceased.

The parties agreed that the landlord executed the writ of possession on June 20, 2023.

The tenant then left the teleconference and did not return as mentioned above.

The landlord submitted the invoice for Bailiff services related to executing the writ of possession on June 20, 2023. The landlord referred to the June 21, 2023, invoice submitted to show that the landlord paid a \$7,700.00 retainer for Bailiff services from which the following charges were applied:

- June 20, 2023, service \$1,464.22
- EZ Movers \$2,364.05
- Storage for 1 Month \$1,312.50
- Disposal Fees \$525.00

The landlord referred to the July 20, 2023, invoice from the Bailiff to indicate that the landlord has been returned \$2,034.23 from this retainer. The landlord indicated that the Bailiff stored the tenant's belongings for a month and then disposed of them. The landlord confirmed they are seeking \$5,214.27 in compensation for Bailiff services.

This is a different amount from which is specified on the invoices provided.

The landlord referred to 5 photos submitted to indicate that they incurred additional disposal expenses because the Bailiff refused to remove urine-soaked mattresses, items from fridge, items from the cupboard, and a large aquarium. The landlord stated that work was also required to remove smells from the rental unit prior to securing new tenants from September 1, 2023, onwards.

The landlord referred to an invoice in the amount of \$550.00 for item removal and smell removal. They also referred to a \$135.00 invoice for garbage removal. The landlord acknowledged that they did not submit any proof of payment related to these two invoices. The landlord stated that on the balance of probabilities, it is highly likely that they would have paid the bills owing.

Regarding the landlord's \$4,201.55 claim for monies charged by the Bailiff for item removal and storage, the landlord said they have no direct control over bailiff charges. The landlord acknowledged that they did not provide evidence related to the condition or contents of the rental unit at the time the tenant was removed. The landlord stated that they are not seeking compensation for loss of rent while the unit was restored.

Analysis

As shown in RTB Rule of Procedure 6.6, the applicant is responsible for establishing their claim for compensation on the balance of probabilities.

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

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 applicant 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 7(2) of the Act was followed and steps were taken to mitigate or minimize the loss or damage being claimed.

Regarding the landlord's claim for compensation for Bailiff services, I find they established their claim for Bailiff services to remove the tenant on June 20, 2023. I award the landlord compensation in the amount claimed of \$1,464.22 for these services.

Regarding the landlord's claim for item removal and storage, I noted during the hearing that the landlord only provided evidence related to the removal and disposal of items left behind by the Bailiff. This resulted in additional charges of \$685.00 to remove kitchen items, and other large items from the rental unit. I find that the landlord satisfied the 4-point test for loss and is entitled to compensation in the amount claimed of \$685.00 for removal of these items.

Regarding the landlord's \$4,201.55 claim for item removal and disposal by the Bailiff company, I find that the landlord failed to establish on the balance of probabilities that they attempted to minimize their costs as required by 7(2) of the Act. I make this finding because no evidence was provided to document the items removed and stored before disposed of by the Bailiff. Nor was any information provided to confirm that the landlord satisfied all obligations under the Regulations for removal and storage of tenant items. I therefore dismiss this portion of the landlord's claim for compensation because I find they did not satisfy the 4-point test for loss. I do not give leave to reapply.

I find that the landlord established a total claim for compensation for loss in the amount of \$2,149.22.

$$\text{\$1,464.22} + \text{\$685.00} = \text{\$2,149.22}$$

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

The landlord indicated that the tenant's mother paid a \$435.00 security deposit in 2006. I find that this deposit was valued at \$455.95 on the day of the hearing according to the online RTB Interest Calculator.

Because the landlords have established a claim for compensation in the amount of \$2,149.22, I order that the landlords retain the full value of the deposit against monies owed in accordance with RTB Policy Guideline 17.

$$\text{\$2,149.22} - \text{\$455.95} = \text{\$1,693.27}$$

I therefore order that the landlords are entitled to \$1,693.27 Monetary Order.

Recovery of filing fee for either party?

The tenant was not successful in the application. I dismiss their request to recover the filing fee without leave to reapply. The landlord was partially successful in their claim. I find that they are entitled to recover the \$100.00 filing fee from the tenant under section 72 of the Act.

Conclusion

I grant the landlord a \$1,793.27 Monetary Order under the following terms:

Landlord Claims	
Compensation for Monetary Loss or Other	\$2,149.22
Minus Current Value of Tenant Deposit	-455.95
	\$1,693.27
Plus Recovery of \$100.00 Filing Fee from Tenant	+\$100.00
Total Amount Owing to landlord	\$1,793.27

The landlord must serve the tenant(s) with this Order as soon as possible. Should the tenant(s) 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 10, 2023

Residential Tenancy Branch