

DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- a Monetary Order for unpaid utilities
- a Monetary Order for damage to the rental unit or common areas
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- an Order for the Landlord to return the Tenant's security deposit
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's dispute package and evidence by registered mail on August 12, 2023. The Landlord acknowledged being served with the Tenant's dispute package and evidence by registered mail on August 24, 2023.

Issues to be decided

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

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

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested?

Is the Tenant entitled to a Monetary Order for the Landlord to return the Tenant's security deposit?

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

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

Facts and Analysis

This tenancy began on June 10, 2021 with a monthly rent of \$3600.00 due the first of each month, and with a security deposit of \$1800.00. The tenancy ended on June 28, 2023.

The Landlord testified as follows. The tenancy agreement includes a term that the Tenant is responsible for paying 66.6% of utilities. The Tenant failed to pay utilities for the months of March to June 2023. The Landlord emailed the Tenant the utility bills and calculations each month to request payment. The Landlord emailed the Tenant on July 15, 2023 to demand payment for the unpaid utilities.

The total arrears for unpaid utilities are \$674.03. The Landlord provided the unpaid utility bills and calculations of the Tenant's portion of those bills, and communications with the Tenant regarding utilities, as evidence to support their claims.

The Tenant moved out on June 28, 2023. The Tenant did not clean the rental unit to a reasonable standard. There was trash left behind, staining in cupboards and on counters, and no regular cleaning of the bathroom, kitchen, floors, et cetera was completed by the Tenant on move out. The Landlord hired a cleaner to clean the rental unit on July 1, 2023, and paid \$450.00 for their services. The Landlord provided proof of payment to the cleaner by e-transfer.

The Landlord made a claim for damages cause during the tenancy. However, the Landlord did not complete a move in or move out inspection report with the Tenant, and did not provide photographs or evidence of the condition of the rental unit prior to the tenant moving in.

The Tenant testified as follows. The Tenant did not pay the utilities for April through June 2023. The Tenant cleaned the rental unit before they moved out on June 28, 2023. The Tenant did not cause any damages to the rental unit. There was pre-existing damage that the Tenant reported to the Landlord. The Landlord completed inspections of the rental property every three months during the tenancy, but did not raise any issues about damages until after the end of the tenancy.

The Tenant gave the Landlord their forwarding address on July 19, 2023, and provided a dated and signed letter sent by registered mail as evidence to support their claim.

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

Section 46(6) of the Act states that the Landlord may treat unpaid utilities as unpaid rent if the tenancy agreement states the tenant is responsible for paying utilities, and the landlord has given the tenant a written demand for payment of utilities and the tenant did not pay within 30 days of receiving that demand.

The Tenancy agreement states that the Tenant is responsible for 66.6% utilities to be paid upon receiving the bill and calculations from the Landlord. The Landlord gave the Tenant a written demand for payment of the utilities monthly, the last demand on July 15, 2023, and the Tenant did not pay within 30 days of receiving this demand.

For these reasons, I find the Landlord is entitled to a Monetary Order for unpaid utilities under sections 46(6) and 55(1.1) of the Act.

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

The Landlord did not complete a move in or move out inspection report with the Tenant. Under sections 35 to 38 of the Act, the Landlord's failure to complete inspections has resulted in the Landlord extinguishing their right to make a claim against the Tenant's security deposit for damages to the rental unit.

The Landlord did not provide evidence or photographs of the condition of the rental unit prior to the tenancy. The Landlord has not provided sufficient evidence to prove their claim for a Monetary Order for damage to the rental unit caused by the Tenant.

However, the Landlord has also made a claim for cleaning, which is not considered damage under the Act. The Landlord's right to make a claim against the damage deposit for cleaning has not been extinguished. The Landlord provided photos of the unclean rental unit and the receipt for payment to the cleaner of \$450.00.

I find the Landlord has provided sufficient evidence to prove their claim for a Monetary Order for cleaning costs of \$450.00.

For these reasons, I find the Landlord is entitled to a Monetary Order of \$450.00 under section 67 of the Act.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial or full satisfaction of the Monetary Order requested?

Section 72(2) of the Act states that any monetary order made for payment from a Tenant to a Landlord may be deducted from the Tenant's security deposit. In the above sections I have made findings that the Landlord is entitled to a Monetary Order for unpaid utilities and a Monetary Order for cleaning of the rental unit, for a total of \$1124.03.

For these reasons, I find the Landlord is entitled to retain the portion of \$1124.03 from the Tenant's security deposit in full satisfaction of the Monetary Orders granted to the Landlord, under section 38(4)(b) of the Act.

Is the Tenant entitled to a Monetary Order for the Landlord to return the Tenant's security deposit?

The Landlord is entitled to retain \$1124.03 from the Tenant's security deposit in satisfaction of the Monetary Orders for unpaid utilities and cleaning of the rental unit. The Landlord has extinguished their right to claim against the security deposit for damage to the rental unit. The Landlord has not advanced any other valid claims against the Tenant's security deposit.

For these reasons, I find the Tenant is entitled to a Monetary Order for the Landlord to return the remaining balance of the Tenant's security deposit under section 38.1 of the Act.

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

As both parties were successful in this application, and both parties paid an equal filing fee of \$100.00, I find that neither party is entitled to recover their filing fee for this application under section 72 of the Act.

Conclusion

I find the Landlord is entitled to a Monetary Order of **\$1124.03** for unpaid utilities and loss as a result of the tenancy for cleaning costs under section 67 of the Act. I Order the Landlord to retain \$1124.03 from the Tenant's security deposit of in full and final satisfaction of this debt.

I find the Tenant is entitled to a Monetary Order for the return of the remaining funds from their security deposit, plus interest, under section 38.1 of the Act. I Order the Landlord to pay the balance due of **\$707.46**.

The Tenant must serve this Order to the Landlord as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Tenant's security deposit with interest	\$1831.49
Landlord's Monetary Order for unpaid utilities and cleaning	\$1124.03
Total Amount to be returned to Tenant	\$707.46

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 22, 2023

Residential Tenancy Branch