

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 their filing fee under section 72 of the Act

And the Tenant's cross-application under the Act, requesting:

- compensation for monetary loss under section 67 of the Act
- return of the security deposit under section 38 of the Act
- return of personal property under section 65 of the Act
- their filing fee for this application under section 72 of the Act

Issues to be Decided

Who is responsible for the flood in the rental unit?
Was the tenancy agreement frustrated?

Is the Landlord entitled to:

- unpaid rent or compensation under section 67 of the Act?
- their filing fee under section 72 of the Act?
- retain the security deposit under section 38?

Is the Tenant entitled to:

- compensation under section 67 of the Act?
- an order for the return of personal property under section 65?
- their filing fee under section 72 of the Act?

Facts and Analysis

The tenancy began on October 1, 2020. The monthly rent at the end of the tenancy was set at \$1,212.00, due on the first of each month.

The Tenant provided a security deposit in the amount of \$597.50. Interest of \$3.96 has accrued on the deposit from January 1, 2023, to May 4, 2023, the date the Landlord applied to retain it, for a total deposit of \$601.46.

A flood occurred in the rental unit on August 19, 2022. The parties disagree who was responsible for the flood.

The Tenant vacated the rental unit on August 27, 2022, having made their last rent payment on August 1, 2022. The Tenant says they were forced to leave by the Landlord and the Landlord says the Tenant left after giving less than one month's notice. The parties disagree whether the tenancy agreement was frustrated.

The Landlord hired a restoration company to extract the water and repair the unit. Water extraction began on August 19, 2022. The unit was partially demolished, flooring, sub flooring, and baseboards were replaced, and repairs were fully completed by October 31, 2022. The Landlord offered to allow the Tenant to return to the unit after repairs were completed, but the Tenant did not respond.

The Landlord says they are insured and their deductible for water damage is \$50,000.00, exceeding the cost of repairs. The Landlord says it is a material term of the tenancy agreement that the Tenant maintain their own insurance which the Tenant failed to do in this case.

Who is responsible for the flood in the rental unit?

The Landlord says they were alerted to the flood when another occupant noticed water leaking in the parkade. The Landlord's agent traced the water up to the second floor and then the third floor where the Tenant's unit is located. The Landlord's agent says approximately half of the studio unit was flooded, along with the hallway and part of the unit below and hallway below and into the parkade.

The Landlord says the Tenant's bathroom sink plumbing was blocked by debris at the plug itself, implying that proper cleaning by the Tenant would have prevented the slow draining that occurred. The Landlord's evidence indicates there was also a blockage farther down the plumbing. Whether or not this was the case, the Tenant has not submitted evidence that they had informed the Landlord about the sink draining slowly prior to the flood.

The Tenant says they left the tap running in their bathroom because they noticed debris in the tap water, and they had previously been told to run the water until it runs clear. The Tenant then went to the kitchen and did not realize the bathroom sink was overflowing until an agent of the Landlord knocked on the door. The Tenant says the Landlord's agent did not assist to deal with the flooding in the unit. The Tenant mopped up the water with various linens and deposited them in the bathtub.

The Tenant argues that the Landlord is responsible for the flood because they failed to provide properly functioning plumbing in the rental unit. The Tenant says they had previously complained of leaking plumbing, and it took the Landlord four months to repair the leak. I find the previous leak was reported in December 2021 and eventually repaired by the Landlord's agent in March 2022, prior to the flood in August 2022, and while it may have caused damage to the bathroom vanity and or countertop, it is not relevant to the cause of the flood in August 2022.

The Tenant says they were following the Landlord's directions by leaving their tap running because they had been advised to do so in the past when their water was not running clear. However, I find the Landlord had not provided those instructions in this instance. The Landlord says that they did not receive complaints of dirty water on August 19, 2022, from other building occupants, and the Landlord does not know of any reason why the Tenant's water would not be running clear if that was the case.

The Tenant says there were plumbing issues in June 2022. I find the email evidence submitted for that date indicates there was an emergency sprinkler system shut down which resulted in temporary brown water, unrelated to drainage issues in the Tenant's bathroom sink.

The Tenant has not submitted evidence that they notified the Landlord of issues with the bathroom sink plumbing after it was repaired in March 2022, prior to August 19, 2022, when the flood occurred. I find it would not have been possible for the Landlord to address any blockage to the sink's plumbing without reasonable notice from the Tenant.

Based on the evidence and testimony of the parties, I find the flood would not have occurred if the Tenant had not left the bathroom tap running. Furthermore, if the Tenant was aware of slow drainage prior to the flood, it was unreasonable for them to leave the tap running unattended. I find the Tenant is responsible for the flood.

Was the tenancy agreement frustrated?

The Tenant submitted emails they sent to the Landlord claiming the tenancy agreement was frustrated. However, according to Residential Tenancy Policy Guideline 34, a party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

I find the Tenant's negligent actions caused the flood. Therefore, I find the tenancy agreement was not frustrated.

Is the Landlord entitled to unpaid rent or compensation under section 67 of the Act?

The Landlord claims loss of rental income while repairing the flood damage in the rental unit from September to October 2022.

The Tenant says the Landlord cannot claim for loss of rental income because they were willing to continue the tenancy and the Landlord constructively evicted them by

requesting them to remove their belongings to allow for restoration and asking when they planned to move out.

According to Policy Guideline 3, if a Tenant does not leave the unit in a reasonable state of repair as required by section 37 of the Act, and the premises are un-rentable because of this, then in addition to compensation for the damage to the property, the Landlord can also seek compensation for loss of rent. The Landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

The Tenant submitted an email dated August 25, 2022, where they inform the Landlord they will vacate the unit by August 31, 2022, and they also say the tenancy is frustrated and the Landlord is forcing them out.

Whether the tenancy was ended by the Landlord or the Tenant, I find the unit was not in rentable condition at the end of the tenancy. So, the Landlord is entitled to loss of rent for the reasonable time to repair the unit.

The Landlord says they completed the repairs in a reasonable length of time, and the Tenant has not provided any information to contradict this. I find the Landlord acted without undue delay and I acknowledge the time it takes to wait for materials and to book tradespeople.

Therefore, I award the Landlord two month's rent as claimed, in the amount of \$2,424.00.

Is the Landlord entitled to a Monetary Order for damage to the rental unit, money owed, or compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 32(3) of the Act states that a Tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the Tenant or a person permitted on the residential property by the Tenant.

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.

The Landlord claims compensation for emergency restoration services to extract water from the rental property, installing flooring and baseboards, and re-installing the base cabinets that had to be removed during repairs to the studio apartment. The Landlord submitted an invoice from company one in the amount of \$16,574.25 and company two in the amount of \$2,730.00, totalling \$19,304.25.

The parties agree the damage or loss exists as caused by the flood, and since I have found the Tenant responsible for the flood, I will consider whether the Landlord has provided sufficient evidence of the actual cost of repairs, and whether the Landlord mitigated their losses.

The Tenant says their unit was already affected by moisture due to a leak in the bathroom sink that took four months for the Landlord to repair. The Tenant says the building itself has a condensation and moisture problem.

The Tenant says the Landlord has only provided quotes and no proof of actual payment for the repairs. The Tenant argues the Landlord may not have paid as much for repairs as they are claiming.

I find the invoices the Landlord submitted for water extraction and remediation include a column titled "mark up" charging an additional 15% or more in addition to the cost for some of the labour, equipment rentals, and sub-contractor fees.

I find the cost for equipment rental is \$9,436.33, which includes \$5,750.00 for rental of 5 dehumidifiers for approximately 8 days. A readily available online estimate shows the cost to rent 5 dehumidifiers for 8 days in a similar region at less than half of that cost.

I note there are discrepancies in the detailed billing such as charges for five hours of demolition on August 19, 2022, which are not noted on the project cover letter list of activities completed that day. The activities listed on August 19, 2022, are inspection, moisture readings, water extraction and equipment installation. Demolition is noted on August 22, 25, 26, and September 7, 2022. I find there are multiple charges for vinyl plank flooring installation, and the Landlord has provided another invoice from a different company for installation of vinyl click flooring, baseboards, and cabinetry.

The Landlord noted they had negotiated a partial reduction of \$5,262.59, in the first company's billing due to work that was performed incorrectly, and this may explain the apparent double billing for flooring installation. I find the cost of flooring and cabinetry installation by the second company was \$2,730.00, which is around half of the cost reduced from the first company's invoice, indicating the first company charges higher rates.

I find the Landlord has not provided photographs of the unit or any reports to show that the extent of repairs undertaken were required or to clarify whether any water damage in the unit was pre-existing. I find the invoice for the work done by the first company is

overinflated and the Landlord has not submitted evidence of the actual cost paid in the form of receipts.

The Landlord's evidence indicates they used "in house" building maintenance to perform repairs for the rental unit below the Tenant's. However, they have not indicated the cost for those repairs for comparison.

I find the Landlord has only partially mitigated their losses as required under section 7(2) of the Act because they could have hired their "in house" building maintenance or another company at a greatly reduced cost.

In the circumstances, I find it reasonable to award the Landlord 50% of the amount claimed for the first company's invoice, \$8,287.13, plus the \$2,730.00 for the second company's invoice, totalling \$11,017.13.

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

As the Landlord was mostly successful in their application, I find that they are entitled to recover their \$100.00 filing fee under section 72 of the Act.

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

I find the Tenant has not presented any evidence that they served their forwarding address to the Landlord as required by section 39 of the Act. The Landlord indicated they may have obtained the Tenant's address by skip trace.

Therefore, under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit plus interest, \$601.46, in partial satisfaction of the monetary award.

Summary

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord is entitled to a Monetary Order under sections 32 and 67 of the Act, in the amount of \$12,939.67 as follows:

Description	Amount	Less Deposit	TOTAL
Loss of rent	\$2,424.00		
Company One invoice	\$8,287.13		
Company Two invoice	\$2,730.00		
Filing fee	\$100.00		
TOTAL	\$13,541.13	\$601.46	\$12,939.67

Is the Tenant entitled to compensation under section 67 of the Act?

The Tenant must satisfy the following four elements as required under section 67 of the Act, to establish their claim:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord 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 Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant claims:

- \$498.44 for AirBnB stay August 27-30, 2022
- \$950.00 for temporary rental from September 1-17, 2022
- \$1,800.00 for security deposit and rent for new rental
- \$7,348.00 for increased cost of rent from September 2022 to July 2023
- \$2,200.00 food costs from August 26 to September 16, 2022
- \$412.01 Uhaul fees
- \$1,800.00 increased gas and parking
- \$1,250.00 for linens used to mop up flood
- \$17,000.00 for gold jewellery

I have found the Tenant responsible for the flood which led to all of these expenses other than their claim for lost or stolen gold jewellery. I do not find the Landlord breached the Act, regulations or the tenancy agreement in relation to these claims.

I decline to award the Tenant compensation for their costs of items that were damaged due to the flood, their costs of moving, storage, food, other accommodations, and increased rent, gas and parking. I find the Tenant failed to have Tenant's insurance to cover these costs, so they have not mitigated their losses as required under section 7(2) of the Act.

Regarding the lost or stolen gold jewellery, I find the Tenant has not presented evidence that these items belonged to the Tenant at the time in question, or that they were located in the rental unit when the restoration company was working there.

The Tenant has not presented evidence that they reported these items stolen to the police or to the restoration company.

The Tenant has not provided proof of the actual amount required to compensate them for the value of the items. The Tenant says the items were not insured, so I find they have not mitigated their losses under section 7(2) of the Act.

Is the Tenant entitled to an order for the return of personal property under section 65?

The Tenant says the restoration company broke down their closet when the Tenant was not present in the rental unit, and the Tenant's jewellery bag went missing.

The Tenant says repairs were not urgent at that point and the restoration company should not have proceeded in the Tenant's absence. The Tenant requests the return of their personal property.

While the Tenant has testified as to the timeline of events, I find the Tenant has not presented any evidence to substantiate their claim that an employee of the restoration company stole their items.

Since the onus to prove their case is on the person making the claim, I dismiss the Tenant's application in its entirety, without leave to reapply.

Conclusion

I dismiss the Tenant's application in its entirety, without leave to reapply.

I grant the Landlord a monetary order in the amount of **\$12,939.67**. The Landlord is provided with this Order on 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: December 8, 2023

Residential Tenancy Branch