

DECISION

Introduction

This hearing dealt with the landlords' 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 damage to the rental unit or common areas under sections 32 and 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

It also dealt with the tenants' Application for Dispute Resolution under 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 the return of all or a portion of their security deposit and/or pet damage 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

The landlord WK attended the hearing. The tenants also attended the hearing. References to "the landlord" in this decision refer to WK.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged service of the Proceeding Packages by registered mail. I find that service was done in accordance with the Act.

Service of Evidence

Both parties acknowledged receiving the other's evidence. Neither raised any issue with respect to service of evidence. I find that evidence was served in accordance with the Act.

Preliminary Issue – Amendment of Parties

I advised the parties that I would be adding the landlord WK as a party to both proceedings. WK consented to this amendment and the tenants did not object. Following the hearing, I determined that it was also appropriate to add JB as a respondent to the landlords' application.

Issues to be Decided

Are the landlords entitled to compensation for unpaid rent under section 67 of Act?

Are the landlords entitled to compensation for damage under sections 32 and 67 of the Act?

Are the landlords entitled to compensation for monetary loss under section 67 of the Act?

Are the tenants entitled to compensation for damage or loss under section 67 of the Act?

Are the landlords entitled to retain all or a portion of the tenants' security and/or pet damage deposit? If not, are the tenants entitled to return of the security and/or pet damage deposit under sections 38 and 67 of the Act?

Is either party entitled to recover the filing fee?

Background and Evidence

The tenancy began on March 1, 2023. Monthly rent was \$2,400.00. The tenants paid a security deposit and pet damage deposit totaling \$2,400.00. A move in condition inspection was conducted and the report was provided to the tenants.

The parties mutually agreed to end the tenancy effective April 16, 2023. The tenants paid \$1,200.00 in rent for April 2023. They ultimately vacated the property on April 18, 2023. The landlords said they are owed \$240.00 in unpaid rent and overholding rent. During the hearing, the tenants agreed that this amount is owing.

A move out condition inspection was conducted on April 17, 2023. It was conducted by the landlord CE and the tenant CA. WK said that he was told that it was rushed because the tenant had a dinner to attend and the CE felt awkward about the process. Following the inspection, CE added a considerable number of details to the report. The landlord said that the area around and underneath the oven and fridge was dirty. Pictures showing dirt on the kitchen floor, on the ceiling of the dining room, in the boot closet, and in the laundry room were also submitted. The move out condition inspection report (which as stated above, had substantial additions after it was signed by the tenant)

repeatedly uses the code DT (meaning dirty), in reference to areas throughout the house.

The landlords submitted a cleaning invoice for \$294.00. Cleaning was done on April 19, 2023. The invoice shows that cleaning was done throughout the unit, including in and around the fridge and the stove, the pantry closet, the bathroom, the boot room walls and floors, and the windows, walls, lighting fixtures and trim throughout the house.

The tenants said that they had no knowledge of these details and that these issues were not raised during the move out inspection. The tenants also acknowledged that it was possible that certain areas were missed by their cleaners, such as underneath appliances. They said that they otherwise did not agree with the content added to the move out inspection report by CE. In addition, they said that had any cleanliness issues been pointed out to them at the time, their professional cleaning company would have returned to the rental unit to redo or complete their work at no cost to any of the parties. The tenants submitted an email from November 2023 from the cleaning company showing that this is their approach to dissatisfied customers.

The landlords also said that the tenants only returned 1 of 2 keys. As a result, the front door lock was replaced at a cost of \$83.86. The tenant CA said that when he left the rental unit, he told the landlord CE that he could go get the second key from his friend, but that CE told him that it did not matter because she was going to change the locks regardless. The landlord WK said that he did not know whether CE told the tenant that but that it was not their practice to change locks as a matter of course between tenancies.

The tenants said that they gave their forwarding address by email to the landlords on May 5, 2023. They submitted an email from the landlord CE acknowledging receipt of the forwarding address by email. The landlord agreed with this. On May 12, 2023, the landlords returned \$1,944.20 to the tenants. The landlords filed for dispute resolution on May 29, 2023.

The tenants said that the landlords overcharged them utilities by \$50.00. The landlord agreed with the tenants on this point.

Analysis

Is the landlord entitled to compensation for unpaid rent under section 67 of Act?

The tenants acknowledged owing \$240.00 to the landlords in unpaid and overholding rent.

Is the landlord entitled to compensation for damage under sections 32 and 67 of the Act?

Is the landlord entitled to compensation for monetary loss under section 67 of the Act?

At the hearing, the landlord indicated that their claim related to the cleanliness of the rental unit rather than damage. I therefore find it is appropriate to dismiss their claim for compensation for damage under section 32 of the Act but consider their claim for compensation related cleaning the rental unit under section 67 of the Act. This is appropriate given that the tenants clearly understood the landlords' claim and were in a position to defend against it.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with that party to establish the claim. In this case, to prove a loss, they 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 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 landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Cleaning invoice

I accept that the areas shown in the pictures submitted by the landlord (kitchen floor, on the ceiling of the dining room, in the boot closet, in the laundry room, around the kitchen appliances) were left in a dirty state by the tenants.

I do not accept that any other areas in the house were left dirty. The landlord CE did not attend the hearing to give any evidence related to what she saw. I find that the condition inspection report she filled out is unreliable because the details were added in the absence of the tenants. The tenant CA did attend the hearing and said that he disagreed with CE's additions. He conceded, however, that it was possible that the areas shown in the pictures were dirty. I find that he is a credible witness.

Regarding the areas that were left unclean (ie. under the fridge and oven, the boot room, etc), I find that the landlords have submitted proof of the actual amount required to compensate for the claimed loss because the cleaning invoice is detailed and can be parsed out for specific items.

However, the landlords failed to mitigate their loss. I find that their loss stems from how CE conducted the condition inspection. Had she done it properly and completed it in full in the presence of the tenant, the tenants would have had an opportunity to have the

cleaning company return at no charge. This would have avoided a loss for either party. For that reason, I decline to award the landlords any compensation for cleaning.

Lock

I accept that the tenants only returned one key rather than two. I accept that the landlords replaced the lock to the front door for \$83.86. I accept the tenant CA's evidence that the landlord CE told him that he did not have to recover the second key because the landlords were going to replace the lock regardless. I make this finding because CA was a credible witness, CE was not present to contradict his evidence, and WK had no knowledge of the conversation between CA and CE. Because of this, I find that the damage was not caused by the tenant because CE told him he did not need to return the second key. I decline to award any compensation for the lock replacement.

Is the tenant entitled to compensation for damage or loss under section 67 of the Act?

The landlords acknowledged owing \$50.00 to the tenants due to overpayment of utilities.

Is the landlord entitled to retain all or a portion of the tenant's security and/or pet damage deposit? If not, is the tenant entitled to return of the security and/or pet damage deposit under sections 38 and 67 of the Act?

Section 38(1) 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, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(4) of the Act states that a landlord is allowed to retain from a security deposit if:

- at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,
- or after the end of the tenancy, the director orders that the landlord may retain the amount.

Section 38(6) of the Act states that if the landlord does not return the security deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security deposit.

I find that the tenancy ended on April 16, 2023, which is the date of the Mutual Agreement to End the Tenancy.

I find that the landlords received the tenants forwarding address on May 5, 2023. The tenants submitted a copy of the email send to the landlord CE and her response to the

email on May 5, 2023, which started by saying “A forwarding address has not been provided until now”. While normally, email is not a valid way to serve under the Act (in the absence of agreement between the parties, which did not exist here), I find that this is an appropriate case to exercise my discretion under section 71(2) of the Act to find that the tenants’ forwarding address was validly served on May 5, 2023. I make this finding because of CE’s response to the email, which clearly shows that she understood that the tenants were sending her their forwarding address.

The landlords had 15 days from May 5, 2023 to either return the deposits or make an application for dispute resolution claiming against them. On May 12, 2023, the landlords returned \$1,944.20. On May 29, 2023 (outside the 15 day period), they made an application for dispute resolution.

The parties agree that at no point the tenants consented to the landlords retaining any portion of the deposit.

The failure of the landlords to return the deposits in full or to file for dispute resolution within 15 days means that the deposits are doubled in accordance with section 38(6) of the Act. The entire deposits are doubled, and not only the amount that was not returned to the tenants.

Policy Guideline 17 makes this clear:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant’s written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

I am therefore awarding to the tenants the return of double their deposits, less amounts previously paid or owing as detailed to above.

Is either party entitled to recover the filing fee?

The tenants were fully successful in their application. The landlords were partially successful. I find that the tenants are entitled to recover \$50.00, or half of their filing fee, from the landlords.

Conclusion

I grant the tenants a Monetary Order in the amount of \$2,726.47 under the following terms:

Monetary Issue	Granted Amount
Double security and pet damage deposit	\$4,800.00
Less – amount previously returned	\$1,944.20
Plus – interest on amount previously returned, calculated to May 12	\$4.36
Plus – interest on amount previously returned, calculated to December 15	\$6.31
Less – rent and overholding rent owing	\$240.00
Plus – utility overpayment	\$50.00
Plus – filing fee	\$50.00
Total Amount	\$2,726.47

The tenants are provided with this Order in the above terms and the landlords must be served with **this Order** as soon as possible. Should the landlords 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 15, 2023

Residential Tenancy Branch