

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 damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for monetary loss or other money owed under section 67 of the Act
- authorization to retain all or a portion of the tenant's security and/or pet damage 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 Tenant's Application under the Act for:

- a Monetary Order for monetary loss or other money owed under section 67 of the Act
- Return of the security and/or pet damage deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The hearing took place over two days, on October 30, 2023 and December 5, 2023. The Tenants attended both hearings. The Landlord attended both hearings as well. The Landlord's agent (her son) spoke for her at both hearings. The Landlord's husband was also present for both hearings.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord served their Proceeding Package by registered mail on each of the tenants. Canada Post tracking slips were submitted showing this.

The Tenants served their Proceeding Package by registered mail on the landlord. A Canada Post tracking slip was submitted showing this. The Tenants also served their amendment by registered mail on the Landlord.

Service of Evidence

The Tenants served their evidence on the Landlord by registered mail. The Landlord indicated that they did not receive any evidence. However, the Tenants' Canada Post evidence showed that the Landlord did not pick up the package after a notice card was left.

At the first hearing, the Tenants indicated that they did not receive any evidence from the Landlord. Because the hearing did not conclude on the first day, I directed the Landlord to serve their evidence following the hearing and the Tenants to re-serve their evidence (all by email).

At the second hearing, both parties confirmed that they received each other's evidence. I am therefore satisfied that evidence was served in accordance with the Act.

Issues to be Decided

Is the Landlord entitled to compensation for monetary loss arising from the fire?

Are the Tenants entitled to compensation for monetary loss arising from the fire?

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to compensation for other monetary loss?

Is the Landlord entitled to retain the security deposit and pet damage deposit being held on behalf of the Tenants? If not, are the Tenants entitled to the return of the security deposit and pet damage deposit?

Is either the Landlord or the Tenants entitled to recover the filing fee?

Background and Evidence

The tenancy began on July 1, 2023. Monthly rent was \$3,000 a month. A security deposit of \$1,500.00 was paid by the Tenants. A pet damage deposit of \$750.00 was also paid by the Tenants. Both deposits are currently held by the Landlord.

The parties agree that there was a fire at the rental unit shortly after 3pm on July 17, 2023. The fire originated in the electrical panel, which was located in a room in the basement of the rental unit.

The Tenants said that the fire was the Landlord's fault. They submitted a Fire Report from the City of Surrey. The Fire Report states that a Fire Investigator attended at the rental unit on July 18, 2023. It indicates that the "source of ignition" was "a fixed electrical conductor" and the cause of the fire was deemed "accidental due to an electrical short circuit."

In sum, the Tenants say that the Landlord's husband was negligent – by repeatedly trying to force the circuit on, he caused the fire.

The Tenants said that the Landlord's husband told them that there had been an issue with the same circuit breaker in the past. They also submitted documents from the City of Surrey showing that there was "no final occupancy date on file" with the City, which they say shows that the property was not fit for habitation.

The Tenants said the Landlord's husband attended the rental unit on two occasions on July 17, 2023. The power had previously gone out around 2:30-3am. The next morning, the Tenants contacted the Landlord's husband. The first time he came, that morning, the Landlord's husband repeatedly tried to turn the circuit breaker on in the presence of the Tenant VR. This did not work. The Tenants said that the Landlord returned later in the day and again repeatedly tried to turn the circuit breaker on (upwards of 10 times), this time in the presence of KD. They say that it was 10 minutes after doing this that the fire started. It is worth noting that KD gave conflicting evidence on this point. During the first hearing, she said that she was present with the Landlord in the afternoon. During the second hearing, she said that she was with the Landlord in the morning and that VR was with the Landlord in the afternoon. The Tenant VR indicated that KD was likely wrong on this point, because he said he was with the Landlord in the morning.

The Landlord's husband (SW) agreed that he tried to turn the circuit breaker on twice in the morning. He disputed the Tenants claim that he returned in the afternoon and again tried to force the circuit breaker on. The Landlord's agent said that SW arranged to meet an electrician at the property in the afternoon. He said that it was when he arrived in the afternoon that he noticed smoke coming from the house. SW did not enter the rental unit in the afternoon or touch the electrical panel and instead waited for emergency services to arrive in the carport.

The Landlord said that the cause of the fire was the overloading of the electrical panel by the Tenants. In particular, in the days prior to the fire, the Tenants had purchased an 1800 watt air conditioning unit. The Tenants were also using a portable dishwasher and a gaming console that repeatedly caused the circuit breaker to trip the night before the fire. The Landlord said that the Tenants' son had repeatedly forced the circuit breaker on that night. The Landlord said that the Tenants' overloading of the electrical panel caused the fire. He referred to the City of Surrey Incident Report, which says that the origin of the fire "appear[s] to be electrical overload".

The Tenants said that the air conditioning unit had been disconnected since 8am on July 17th, 2023, and so it could not have caused the fire.

After the fire, the Tenants stayed in an Airbnb in Hope for 12 nights, from July 18 to July 30, 2023. The Tenants paid \$375.00 a night for the Airbnb. The total cost was \$5,416.03. The Tenants paid rent in July 2023. In addition to claiming the cost of the Airbnb, the Tenants say that they should not be required to pay rent for 12 days in July (approximately \$1,400, pro-rated).

In addition, the Tenants said they were not able to recover perishable food from the freezer and fridge. They said that they had no place to store their food (despite their efforts to get help from a friend). They said that because the power to the entire house was cut off following the fire and until July 26, 2023, the food could not be recovered. The total amount of lost food they claimed was \$411.74. The Landlord's agent said that the Tenants had an opportunity to recover their food once the fire was out. He also said that a generator was initially offered to provide power to the house, but that shortly thereafter, the Landlord realized that this was not a good solution.

The Tenants said that they lost a mattress and a desk to smoke damage. These items were in the room in the basement where the electrical panel was located. The mattress was two years old and cost \$480.00 new. The desk cost \$100.00.

The Tenants said that they purchased paint at the start of the tenancy and intended on painting the unit. The cost of the paint was \$109.16. They also said that they incurred moving fees in the amount of \$1,102.00.

During the period the Tenants were at the Airbnb, the Landlord conducted repairs on the property. On July 30, 2023, the Tenants were told they could return to the rental unit.

On July 27, 2023, the Tenants informed the Landlord by email that they considered the tenancy frustrated. The Tenants told the Landlord that their insurance company inspected the house and would not provide coverage. The insurance company told them that the house was in poor condition, exhibits rot and mold throughout the exterior and the interior, electrical wiring is a cause for concern, the roof is in poor condition, and the balcony and deck railings are weak and unstable. The Tenants said that because of the fire and the statement from the insurance company, they were ending the tenancy and considered it frustrated. For that reason, the Tenants informed the Landlord that they would not pay rent in August 2023.

The Tenants said that they were not previously aware of the issues revealed by the insurance adjuster. The previous Tenant living in the rental unit also gave evidence that there were a number of issues with the property when she was living there, including leaks, mold, flooding and soft spots in the house.

The Landlord said that their expectation was that rent owing in August 2023 would be paid. They did not accept that the tenancy was frustrated. The Tenant ultimately

returned the keys on August 6, 2023. The Landlord claimed rent for August 2023 in the amount of \$3,000. The Landlord abandoned a claim for unpaid utilities.

The Landlord ultimately repaired the electrical panel. The cost was \$2,027.55. The Landlord said that because the Tenants caused the fire, they should be held responsible for this amount.

The Landlord said that the Tenants left the property in a poor state. In particular, the Landlord said that there were holes in the living room and the main bedroom that needed to be fixed. There was also damage to the wallpaper. The Landlord had allowed the Tenants to repaint part of the house, but this work was not completed by the Tenants. The Landlord said that the cost of paint was \$96.00. Painting the unit took the Landlord and her husband 55 hours and they should be compensated at a rate of \$15.00/hr (total: \$825.00). The Landlord said that the rental unit was last painted 5 years ago. The Tenant said that they did not paint the living room at all. They said that they did not complete the painting because of the fire. They acknowledged that there were a number of holes that had been filled in (creating white patches on the wall) but said that it would not require much work to repaint them.

The Landlord's agent also said that the Landlord's insurance policy required either on-site security or someone staying in the property. Because of this requirement, the Landlord's husband spent 50 hours at the property over three weeks following the tenants' departure. He said that the Landlord should be compensated at a rate of \$15.00/hr (total compensation, \$750.00). The Tenants say in response that this shows that the house was not fit for occupation, because the Landlord otherwise could have found a new tenant sooner.

The Landlord said that after the Tenants moved out, the house was not clean. The Landlord incurred carpet cleaning costs in the amount of \$315.00 on August 16, 2023. No receipt was submitted in support of this claim. In addition, the bathroom and the floor of the room in the basement (where the electrical panel is located) were dirty. The Landlord's agent said it took the Landlord 12 hours to clean these areas and that she should be compensated at a rate of \$15.00/hr (\$180.00).

In response, the Tenants said that the basement room was not cleaned because fire cleanup by the Landlord had not been finished. In particular, there was insulation from the wall strewn on the floor. The Tenants also said that the carpet was clean and that no additional cleaning of the rental unit was necessary. They said that the Landlord submitted pictures that were taken several days before the Tenants actually vacated the rental unit.

Analysis

Is the Landlord entitled to compensation for monetary loss arising from the fire?

Are the Tenants entitled to compensation for monetary loss arising from the fire?

To be awarded compensation for a breach of the Act, a party must prove:

- the tenant/landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- they acted reasonably to minimize that damage or loss

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

It is appropriate to group the Tenants' compensation claim and part of the Landlord's compensation claim together because they ultimately rest on the same circumstances.

The Tenants say that they should be compensated for monetary loss arising from a fire in the rental unit that was caused by the Landlord. This loss includes their Airbnb stay, rent paid for days they could not live in the rental unit, lost perishable food, moving costs, and paint they purchased.

The Landlords say that they should be compensated for damage arising from the same fire but that they say was caused by the Tenants. Their loss includes electrical work and drywall repair.

In grouping their claims, I am mindful that each party bears the onus of proving, on a balance of probabilities, their respective claim. In other words, I must be convinced that it is more likely than not that either the Landlord or the Tenants caused the fire before awarding any compensation (which must relate to a loss arising from the fire).

For the reasons below, I am not satisfied that either party has proven, on a balance of probabilities, that the other party caused the fire.

The Landlord's case is based on their claim that the Tenant overloaded the electrical panel and that this led to the fire. They said that the Tenants acquired a large air conditioning unit a few days before the fire. They said that the use of the air conditioning unit, along with other energy-intensive appliances such as a gaming console and a portable dishwasher, overloaded the electrical panel and caused the fire.

The Landlord did not submit any expert evidence to support their claim, nor was there any (professional) witness available who could speak to the cause of the fire. While

expert evidence is not required in RTB hearings, it can be helpful, particularly when the subject matter is technical. The landlord did point to the City of Surrey Incident Report, which says that the “seat of the fire was within wall space, appearing to be electrical overload”. This line from the report appears to come from the observations of one of the first responders involved in putting out the fire. The Fire Report, prepared by a City of Surrey Fire Investigator the following day, makes no mention of electrical overload. I agree with the Tenants, who pointed out that the fire started in the afternoon (shortly after 3pm), that the appliances in question had not been on all morning, and that this undermines the Landlord’s theory that the fire was caused by an overloaded electrical panel.

I am not satisfied that the Landlord has advanced sufficient evidence to prove that the Tenants caused the fire. I therefore dismiss their claim of compensation for electrical work, drywall repair, and fire/smoke restoration.

The Tenants’ claim is based on the actions of the Landlord’s husband SH. They say that they told SH in the morning that they did not have power and that he came by on his own shortly thereafter. They said that SH tried to force the circuit on and was unsuccessful. They said that he returned in the afternoon and again repeatedly tried to force the circuit on but was once again unsuccessful. They said the fire started approximately 10 minutes later. The Tenants also pointed to the City of Surrey Incident Report, which says that the source of ignition was a “fixed electrical conductor”.

The Tenants’ evidence regarding the actions of SH was contradictory, however. KD first said that she was present when the Landlord was trying to force the circuit on when he came by the second time, in the afternoon. However, she later contradicted her evidence, saying that she was actually present when he came by the first time, in the morning, and that her husband, the tenant ER, was there in the afternoon. ER candidly said that KD was wrong, and that his recollection was that he was there in the morning. KD’s recollection and credibility is important because the Tenants’ case substantially rests on the short time gap (10 minutes) between SH forcing the circuit breaker on and the start of the fire. It should be said as well that SH briefly testified that he did not touch the electrical panel in the afternoon, and that his son (who was not present) repeatedly said that SH did not enter the property in the afternoon. I find the significant, unexplained contradiction in KD’s testimony to be problematic and for that reason, I do not accept her evidence. I am unable to conclude, on a balance of probabilities, that SW repeatedly tried to force the circuit on in the minutes leading up to the fire.

Regarding the City of Surrey Incident Report, I find that when it says that the source of ignition was a “fixed electrical conductor”, it means that the fire started in the electrical panel. It does not, at any point, say that the fire was caused by repeatedly forcing the circuit on, or that SW was involved in causing the fire.

I am not satisfied that the Tenants have advanced sufficient evidence to prove that the Landlord caused the fire. I therefore dismiss their claim of compensation for their Airbnb

stay, rent paid for days they could not live in the rental unit, lost perishable food, moving costs, and paint they purchased.

Is the Landlord entitled to compensation for unpaid rent?

The Landlord said that the Tenants vacated the rental unit on August 6, 2023 after telling them by email on July 27, 2023 that they considered the tenancy frustrated and would not returning to live in the rental unit. The Landlord said that they should be awarded compensation in the amount of \$3,000, representing the amount due as rent for August 2023.

The Tenants said that the fire and other issues related to the property discovered in the aftermath of the fire rendered the tenancy frustrated, and that as a result, they should not be liable for rent owing to the Landlord in August 2023.

Policy Guideline 34, Frustration, states as follows:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. 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.

As shown by the Policy Guideline, the test for frustration is high, requiring a radical change in circumstances.

I do not accept that the tenancy was frustrated as a result of the fire. The Tenants' own evidence shows that the fire was limited in its scope, with the City of Surrey Fire Report stating that the extent of the fire was "confined to part of room/area of origin" and the extent of the damage was also "confined to part of room/area of origin". The Landlord took steps to repair the fire damage and make the rental unit livable again, including by repairing the electrical panel (which allowed power to be restored). While the work by the Landlord was not impeccable, outstanding issues (ie. fixing a hole, cleaning up debris and fireglass) could have been addressed between the parties or through the RTB dispute resolution process.

The other issues raised by the Tenants were all pre-existing and were not the result of “an unforeseeable event that radically changed the circumstances” of the contract.

While it is understandable that the Tenants wanted to move on from the rental unit after the fire, the proper approach to ending the tenancy was giving notice in accordance with the rental agreement and the Act.

Regarding compensation to be awarded to the Landlord in relation to August rent, Policy Guideline 3 provides guidance:

C. Tenancies ending early and compensation A tenant is liable to pay rent until a tenancy agreement ends

Sections 45 and 45.1 of the RTA (section 38 of the MHPTA) set out how a tenant may unilaterally end a tenancy agreement.

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

I find that one month of rent (\$3,000) is appropriate compensation because it is the amount the Landlord would have received had the correct notice been given on July 27, 2023 (ie. one month pursuant to section 45 of the Act).

Is the Landlord entitled to compensation for other monetary loss?

The Landlord also claimed additional compensation from the Tenants, arising from damage to the rental unit, the fact that they vacated prematurely, and cleanliness.. As stated above, to be awarded compensation for a breach of the Act, a party must prove:

- the tenant/landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- they acted reasonably to minimize that damage or loss

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I will address each of the Landlord's claims individually.

Painting

The Landlord said that certain areas of the house needed to be repainted because of white patches, the fact that the Tenants never finished painting, and the colour they used in one room of the house.

Policy Guideline 40 on the Useful Life of Building Elements says that interior paint lasts 4 years. The rental unit was last painted 5 years ago. Because it was due to be repainted, I find that no compensation should be awarded for painting the rental unit.

Security Costs

The Landlord said that their insurance policy required someone on site at the property and that the Landlord's husband should be compensated for spending 50 hours there following the premature departure of the Tenants.

The insurance policy was not provided in evidence. In the absence of satisfactory proof of this requirement, I decline to award any compensation.

Cleanliness

The Landlord seeks compensation for carpet cleaning and the 12 hours she spent cleaning areas of the house which were dirty.

I accept that the pictures submitted by the Landlord pre-date the departure of the Tenants by several days. In the absence of other compelling evidence, I am not satisfied that the Landlord has proven that the rental unit was unclean.

Regarding the room where the fire occurred, which the Tenants admitted they left unclean, I agree that the Landlord did not conduct adequate remediation following the fire. The Landlord's failure to do so justifies the Tenants' decision to not clean the room.

I therefore decline to award any compensation to the Landlord related to cleanliness.

Is the Landlord entitled to retain the security deposit and pet damage deposit being held on behalf of the Tenants? If not, are the Tenants entitled to the return of the security deposit and pet damage deposit?

The Landlord is entitled to retain the security and pet damage deposits in partial satisfaction of the monetary award, pursuant to section 72(2) of the Act.

Are the Landlord or the Tenants entitled to recover the filing fee?

I decline to award recovery of the filing fee to either party.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$728.36 under the following terms:

Monetary Issue	Granted Amount
August 2023 rent	\$3,000.00
Less – Security and Pet Damage deposit with interest	\$2,271.64
Total Amount	\$728.36

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 27, 2023

Residential Tenancy Branch