

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;
- 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.

The Tenant filed a cross-application, which was heard at the same time, for:

- compensation for money owed under section 67 of the Act;
- a request for the return of the security deposit under section 38 of the Act.

Issues to be Decided

Is the Landlord entitled to a monetary order for unpaid rent under section 67 of the Act?

Is the Landlord entitled to a monetary order for damage to the rental unit under sections 32 and 67 of the Act?

Is the Landlord entitled to retain the security deposit?

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

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

Facts and Analysis

Based on the evidence and submissions from both parties I find as follows:

- The Tenancy began on February 1, 2023, with a monthly rent of \$2,495.00 due on the first day of each month.
- The Tenant provided a security deposit of \$1,250.00 on January 29, 2023. Interest of \$24.63 has accumulated on the deposit from that date until the date of this hearing, for a total value of \$1,274.63, which the Landlord holds in trust.
- The parties completed a move in inspection on January 29, 2023.

- The tenancy ended on July 9, 2023, as a result of a settlement agreement.
- The Landlord provided more than one opportunity for the Tenant to participate in a move out inspection before completing the inspection themselves without the Tenant on July 9, 2023.
- The Landlord received the Tenant's forwarding address in writing by email on August 5, 2023.
- The Landlord applied to retain the security deposit on August 16, 2023.

Is the Landlord entitled to a monetary order for unpaid rent under section 67 of the Act?

The Landlord provided a Tenant rent ledger to support their testimony that the last rent payment provided by the Tenant was on February 25, 2023, for rent owing for February 2023. The Tenant did not present any evidence that they had made any rent payments after that date.

I find the Landlord has established a claim for rent owing for March 2023 to June 2023 and 9 days of July 2023 in the amount of \$10,704.00.

I grant a monetary award to the Landlord for unpaid rent under section 67 of the Act in the amount of \$10,704.00 as claimed.

Is the Landlord entitled to a monetary order for damage to the rental unit under sections 32 and 67 of the Act?

Under Policy Guideline 16 regarding compensation for damage or loss, to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement.
- loss or damage has resulted from this non-compliance.
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 32 of the Act, the Tenant is responsible for any damage to the rental unit caused by their own actions or neglect. Under section 37 of the Act, the Tenant must leave the rental unit reasonably clean at the end of the tenancy.

The Landlord has presented sufficient evidence to show damages to the rental unit and to show that the rental unit was not reasonably clean at the end of the tenancy. I find the Tenant breached sections 32 and 37 of the Act and the Landlord has suffered a loss as a result.

The Landlord submitted receipts and invoices for the total amount of \$1,757.85 for cleaning, garbage removal and yard cleanup, and repairs including repairs to drywall

and painting, and repairs to closets, stair railings, and plumbing. The Tenant has not provided any evidence to refute these claims.

The Tenant says the Landlord did not allow them to return to complete cleaning. However, the Landlord says the Tenant could have and should have cleaned the unit prior to 1:00pm on July 9, 2023, when the Landlord's order of possession took effect. The emails submitted by the parties indicate the Landlord requested the Tenant to return to take away larger items including a boat, after July 9, 2023, and the Tenant authorized the Landlord to take care of matters and deduct the cost from the damage deposit.

On a balance of probabilities, I find the Landlord has established their claim. I find the Landlord acted reasonably to minimize their losses and the costs claimed are proportionate to the damages shown in their evidence.

I grant a monetary award to the Landlord for compensation under section 67 of the Act in the amount of \$1,757.85 as claimed.

Is the Landlord entitled to retain the security deposit?

I find the Landlord applied to retain the Tenant's deposit within 15 days of receiving the Tenant's forwarding address in writing as required by the Act.

I find the Landlord is entitled to retain the entire security deposit plus interest under section 72 of the Act in partial satisfaction of their claims.

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

The parties agreed for the Tenant to place hydro for the residence into their name and that the Landlord would reimburse the Tenant 35% of the Tenant's costs upon receipt of the bill. This arrangement was made to account for the usage of the unit below the Tenant which was used as a short-term rental.

I find the Tenant has presented evidence that they paid a total of \$3,968.51 for hydro. Therefore, I find the Tenant is entitled to \$1,388.98, as 35% of the amount they paid for hydro. This award to the Tenant will be offset from the amount owing to the Landlord.

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

I find the Tenant is not entitled to the return of their deposit because they failed to participate in the move out inspection as required by the Act.

Summary

I grant the Landlord a monetary order for \$9,798.24 as follows:

Monetary Award	Amount Granted
unpaid rent granted to the Landlord under section 67	\$10,704.00
compensation for damage granted to the Landlord under section 67	\$1,757.85
Authorization to retain the security deposit under section 72	-\$1,274.63
compensation for hydro to the Tenant under section 67	-\$1,388.98
Balance owing to the Landlord	\$9,798.24

Conclusion

I order the Landlord to retain the Tenant's security deposit plus interest in partial satisfaction of their claims.

I grant the Landlord a Monetary Order in the amount of **\$9,798.24** on the above terms. The Landlord must serve **this Order** as soon as possible as part of the enforcement process. 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: January 23, 2024

Residential Tenancy Branch