

DECISION

Introduction

This hearing dealt with counter applications including:

The Tenant's August 18, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's November 24, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for damages caused by the tenant or their guests during the tenants,
- authorization to retain the full value of the tenant's security deposit
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

Preliminary Matters

The parties agreed that the original tenancy agreement was with the named tenant in this dispute and a second party. The parties also agreed to continue with this hearing in absence of this second tenant, who occupied the rental unit between January 2019 and Spring 2021.

The Landlord indicated that they made a mathematical error in calculating their claim for damages and indicated that they are claiming \$17,222.22 as supported by their receipts and not \$15,222 as originally recorded in their monetary order worksheet. I allowed this amendment under RTB Rule of Procedure 4.1 because all supporting information was provided for the Landlord's claim in the amount of \$17,222.22.

Service of Notice and Evidence

The parties testified that they accepted service of Notice and Evidence.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order for compensation in the amount of \$28,014.00 for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?
- Is the Landlord entitled to a Monetary Order in the amount of \$17,222.00 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 award requested?
- Is either party entitled to recover the filing fee for this application?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 1, 2019, with a monthly rent of approximately \$2,334.50.00, due on first day of the month when the tenancy ended, with a security deposit in the amount of \$1,150.00 was collected. A copy of the original written tenancy agreement was provided.

The parties agreed that the residential property was constructed in 2014.

The parties agreed that a Two-Month Notice to End Tenancy was issued to the Tenant on with an effective date of January 31, 2023, with an effective date of April 30, 2023. The Notice was issued so that it could be occupied by the Mother R.S.2 of two of the Landlords, who participated in the hearing.

The parties agreed that the Tenant received compensation for one months rent as required under 51(1) of the Act and that this compensation was applied to rent owed for March 2023.

The parties disagreed on when and how the tenancy was ended. The Tenant testified that they communicated regularly and openly with the designated property manager M.H. and clearly communicated that they vacated on April 8, 2023. The Tenant moved early to a different property in the neighbourhood.

In contrast, Counsel for the Landlord referred to the sworn affidavits of the Landlords and stated that neighbours of the residential property notified them in late April 2023 that the residential property appeared to be abandoned. The property was then attended by the Property Manager who posted a Final Notice to Attend a Property Inspection on May 4, 2023. Counsel for the Landlords referred to an undated letter submitted by the spouse of M.H. that the Landlords received by email on or about October 2, 2023, which states in part:

“The [Tenant] vacated the property without property notification and in a condition of nothing less than horrendous.”

I asked the Landlords during the hearing, if they wanted M.H. to attend as a witness. Counsel for the Landlord responded by stating that it was not required by the Landlords to have M.H. appear. Counsel indicated that the letter from Y.H. was included in the sworn affidavit from R.S.2.

The parties agreed that a move-in condition inspection was conducted on December 28, 2018, and attended by the Tenant. A report was completed and submitted as evidence. The Tenant did not participate in or attend the Move-Out Condition Inspection that was to occur on May 4, 2023, as indicated in the Notice to Participate in the Inspection that was posted to the door of the residential property as required by the Act. Counsel stated that service to the door should be considered adequate service because the Tenant moved to a location within the community and acknowledged driving by the property. A copy of this notice was provided as evidence.

Counsel for the Landlord acknowledged that a Move-Out Condition Inspection report was not completed or provided and argued that the Tenant extinguished their right to retain the deposit first. The Tenant testified that they attempted to participate in a Move-Out Inspection prior to vacating the property on April 8, 2023. The Tenant alleged that they were instructed by Property Manager M.H. that an inspection was not required. The Tenant reiterated that they advised M.H. to retain the full value of the security deposit because the Tenant had not cleaned, needed to replace the deadlock, and left assorted items behind.

The Tenant applied for compensation under section 51 of the Act after receiving the Two Month Notice because it did not appear as though the property was used as indicated on the Notice.

Counsel for the Landlord referred to sworn affidavits submitted by R.S.2 and the Landlords as registered owners of the property as evidence. Counsel indicated that R.S.2. took possession of the property as required within two months of the tenancy ending once all immediate repairs and renovations were completed. The Landlords acknowledged in their submission that the property has not been used and occupied fully since that time because R.S.2. has been required to provide medical care to their elderly mother.

Counsel referred to proof of medical statement as evidence of the mother's illness that was first documented as needing end stage palliative care in May 2023. Counsel also preferred to evidence of a March – April 2023 international trip by R.S.2 and their mother to confirm that R.S.2.'s mother had previously been in good health and the illness was unexpected.

The Landlord requested consideration of extenuating circumstances under 51(3) of the Act. The Landlord referred to proof of utility bills in the name of the Landlords as

evidence of the property being used as intended by the Notice after the tenancy ended as well as proof of a UHaul receipt for transporting R.S.2's possessions to the property.

Counsel for the Landlords referred to Hansard records from April 2018 when the new compensation provisions were being debated in the House, to demonstrate that the Landlord in this dispute has not re-rented the property or done anything deserving of penalty as intended by the amended provisions of section 51 in the Act.

I confirmed with the Tenant that they understood the reference to Hansard.

The Tenant testified that they accepted this evidence and asked why the Landlord did not use the property in other ways after their tenancy ended so that the house would not be vacant. I confirmed for the Tenant that Landlords are obligated to satisfy the intended purpose of the Notice under section 49 of the Act and cannot substitute an alternative use for the original purpose on the Notice. The Tenant acknowledged that their claim for compensation in the amount of \$28,014.00 was unsuccessful as a result.

Counsel for the Landlord reviewed their Monetary Worksheet for compensation in the amount of \$17,222.22 which included the following items:

- Dryer Repair and replacement with receipts
 - \$152.25 and \$702.24
- Dishwasher repair with receipts
 - \$327.00 + \$105.00
- Tenant Moving Truck Damage
 - Roof Repair with receipts \$785.50
 - Gutter repair with receipts \$315.00
- Interior and Exterior Painting and assorted repairs \$11,581.00
- Garbage and cleaning with receipts \$745.00
- Deadbolt replacement with receipts \$175.00
- Rent for April 2023 \$2,334.50

Counsel for the Landlord referred to 32 pages of itemized colour photos depicting documented damage in the rental property after they retained possession of the rental property. Damages were itemized in sworn affidavits from the Landlords.

Counsel for the Landlord claimed rent for the month of April 2023 due to the Tenant abandoning the rental unit and the Landlords not knowing the property was abandoned for weeks until they were notified by neighbours.

The Tenant denied responsibility for the full month of rent for April 2023 and reiterated that they informed the Property Manager M.H. that they would be leaving early. The Tenant claimed they left the property with the Landlord's knowledge through the Property Manager M.H. The Tenant agreed that they owe rent until April 8, 2023.

The Landlord referred to the paid Invoice in the amount of \$11,581.00 for work at the residential property completed between April and July 22, 2023, including:

- Carpet cleaning
- Interior repairs and painting
- Garbage disposal
- Exterior painting including fascia, backstep and shed

Counsel for the Landlord referred to specific photos to illustrate the need for all required repairs.

The Tenant reviewed the photos submitted by the Landlord and testified that they were generally reflective of the condition of the property at the end of the tenancy. The Tenant testified that the damage to the shed door appeared to have happened from someone forcing their way in after the Tenant vacated on April 8, 2023.

The Tenant acknowledged the carpet cleaning costs and reiterated that they informed Property Manager M.H. that they can retain the full value of the security deposit against cleaning and other minor repairs required at the property. The Tenant testified that they resided in the property with their three children and so there was minor wear and tear.

The Tenant disputed the Landlord's claim for compensation for interior and exterior painting and testified that the Landlords indicated that they would be painting anyways. The parties were informed that the expected serviceable life space of an interior paint job is 4 years and 8 years for exterior painting under RTB Policy Guideline 40.

The Tenant accepted the \$745.00 charge for garbage removal and \$175 for a deadbolt replacement as claimed by the Landlord. They testified that they had approval and praise for the Landlord for the Tenant's alternations of the yard while residing in the residential property. Counsel disputed these claims of approved alterations.

Counsel for the Landlord claimed compensation for roof and gutter repair due to damage allegedly caused to the residential property by the Tenant's moving truck. They referred to itemized receipts provided for repair work completed at the property including \$785.00 for roof repair on November 6, 2023, and \$315.00 for damaged gutters on November 15, 2023.

The Tenant testified that they did not realize the moving truck had damaged the property. Counsel indicated that they were informed by the neighbours of the property that the moving truck had caused damage. This was documented in the sworn affidavit from R.S.2.

Counsel referred to a \$152.25 invoice from November 2022 for the dryer at the property that included a note about the clogged vent and lint filter. They claimed this cost against the Tenant for failure to properly use the appliance. Counsel referred to a September 21, 2023, invoice for purchase of a replacement dryer which they are claiming against

the Tenant. The Tenant refused the claim for repair and replacement because it was for servicing and replacing an appliance at the end of its expected lifespan.

The Landlord claimed compensation for a November 2022 invoice for the dishwasher in the amount of \$105.00 for a broken drain pump and a January 2023 invoice for installation of a new dishwasher for the cost of \$327.00. Counsel indicated that these costs are being claimed because the Tenant did not use the appliance as required by best operating practices and failed to clean the filter. The Tenant rejected the claim and denied using the appliance incorrectly.

The Tenant participated actively and respectfully throughout the approximately 120-minute hearing. The Tenant provided extensive testimony that appeared to be based on their reading of written notes and timelines of events and interactions with the property manager M.H. and the Landlords. The Tenant did not submit documentary or other verifiable evidence in response to the Landlord's claim for damages.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim is responsible for providing evidence over and above their testimony to prove their claim.

Is the Tenant entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Section 51(2) of the Act says that if a tenancy ends under section 49 of the Act, a landlord, or purchaser if applicable, must pay the tenant 12 times the monthly rent if the reason for ending the tenancy has not been completed within a reasonable time after the effective date of the notice, or the rental unit is not used for the stated reason for at least six months.

Regarding the Landlord's claim for extenuating circumstances, I refer to RTB Policy Guideline 50 (see page 2):

“...Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy...”

As required by 51(3) of the Act, the Landlord is required by RTB Policy Guideline 50 to prove the reasons they wished to end the tenancy – in this case, that their circumstances justify a finding of “extenuating circumstances”.

Extenuating circumstances are described by Policy Guideline 50, as: “*circumstances where it would be unreasonable and unjust for a landlord to pay compensation because of matters that could not be anticipated or were outside a reasonable owner’s control*”.

I find that the landlords successfully established their claim for extenuating circumstances because:

- They submitted invoices related to various repairs required at the property after the tenancy completed to demonstrate why R.S.2. has occupied the property since July instead of May 2023 and moved their possessions into the property in September 2023.
- They submitted proof of utility billing in the Landlords name to support R.S.2’s use of the property.
- They submitted medical proof and sworn affidavits to support their claim that R.S.2 has been splitting their time between the residential property and another property where they are providing end stage palliative care for their ailing parent.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant did not establish their claim for compensation related to a notice to end tenancy because R.S.2. has occupied the property since the tenancy ended while also caring for their ailing parent.

I therefore dismiss the Tenant’s claim for a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act. I do not give leave to reapply.

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

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.

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

- the tenant 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
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a partial claim for damage to the rental unit or common areas.

I do not award payment for the full month of April 2023 because section 50 of the Act allows the Tenant to vacate early after being served a Two-Month Notice under section 49 of the Act. The Tenant testified that they vacated on April 8, 2023, with the knowledge of the Property Manager M.H. which was disputed by the Landlords. I find that the Landlord failed to establish their claim on the balance of probabilities because they only submitted an email from the spouse of M.H. as evidence - they did not call M.H. as a witness during the hearing.

I therefore find that the Landlord is entitled to prorated payment of rent for April 2023 for the 8 days that the Tenant occupied the property. I award \$614.00 in compensation for rent owing for April 2023 as shown below:

$$\$2,334.50 \times 12 = \$28,014.00 / 365 = \$76.75 \text{ per day}$$

$$\$76.75 \times 8 = \$614.00$$

I find that the Landlord's claim for compensation for garbage removal and deadbolt replacement succeeds in the claimed amount of \$920.00 (\$745+\$175) because the Tenant accepted this claim.

I find that the Landlord's claim for compensation for dryer repair and replacement is partially successful because RTB Policy Guideline 40 establishes that such an appliance should be serviceable for at least 15 years. I therefore find that the Landlord is entitled to payment of \$341.80 from the claimed \$854.49 because 40% of the appliance's expected life remained when it was replaced after 9 years since the appliance was new in 2014.

Likewise, I find that the Landlord had to replace the Dishwasher when there was 1 year remaining on the expected serviceable life of 10 years according to RTB Policy Guideline 40. Where the Landlord stated that they were claiming only install costs and not replacement costs, I find the claimed charge of \$327.00 for installation of a new dishwasher is excessive. I therefore award nominal compensation of \$250.00 under RTB Policy Guideline because I recognize there was a loss but find the Landlord failed to establish their full claim to the total amount of \$327.00 + \$105.00 for the earlier service call.

Regarding the Landlord's claim for compensation for Roof and Gutter repair due to the Tenant's moving truck damaging the property, I find that the Landlord only partially substantiated their claim within their submission of sworn affidavits regarding a message from a neighbour. I therefore award nominal compensation for damage because I verified the photos and the sworn affidavits and find that \$550.00 is appropriate compensation from the total claim of \$785.50 + 315.00.

Regarding the Landlord's claim for compensation for interior and exterior painting and repairs, I find that the Landlord failed to establish the full claim because RTB Policy Guideline 40 which sets out the expected serviceable life of an interior paint job as 4 years and 8 years for exterior paint. I therefore find that both the interior and exterior of the 2014 property required painting in 2023 after the 2019 tenancy ended.

Regarding other charges on this invoice, I find that the Landlord established their claim for "other repairs" as shown in the invoice for \$850.00, garbage removal or \$200.00 and carpet cleaning for \$180.00 because these claims were supported by photos and not challenged by the Tenant. With tax, this amounts to an approximate claim of \$1,378.00

I do not award compensation for exterior repairs because the Tenant alleged that the altered the yard with the Landlords approval. I find that neither side provided verifiable evidence of related correspondence when the changes were first made.

Though the Tenant denied causing the damage to the shed, I acknowledge that damage was caused to the property while it was vacant. I therefore find that the Landlords are entitled to \$2,500.00 in compensation for any damages that may have been caused during this time to the interior or exterior of the property beyond general wear and tear.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$6,553.80.

$\$2500.00 + \$1,378.00 + \$550.00 + 250.00 + \$341.80 + \$920.00 + \$614.00 = \$6,553.80$

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

The Tenant stated that the Landlord can retain their deposit. They testified that this was first indicated in writing to the Property Manager M.H. when the tenancy ended. A landlord can retain the security deposit under 38(4)(a) of the Act if the tenant agrees in writing that it can be retained.

I find that this deposit was valued at \$1,174.09 at the date of the hearing according to the online security depot interest calculator because it has earned \$24.09 in interest.

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

Is either party entitled to recover the filing fee?

The Tenant was not successful in their claim. I dismiss their request to recover the filing fee from the Landlord under section 72 of the Act.

The Landlord was mostly successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenant's claim for a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act is dismissed without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$5,479.71** under the following terms:

| Monetary Issue | Granted Amount |
|--|-------------------|
| a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act | \$6,553.80 |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act | \$100.00 |
| Authorization to retain the full value of the security deposit | -\$1,174.09 |
| Total Amount | \$5,479.71 |

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 29, 2024

Residential Tenancy Branch