

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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant filed a cross-application requesting the return of the deposit under section 38 of the Act, which was heard at the same time.

Issues to be Decided

Is the Landlord entitled to an order for unpaid utilities under section 67 of the Act?

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

Is the Landlord entitled to retain any portion of the deposit?

Is the Landlord entitled to their \$100.00 filing fee?

Is the Tenant entitled to the return of their deposit?

Facts and Analysis

The tenancy began on September 1, 2022, for a fixed term ending August 31, 2023.

Monthly rent was \$2,650.00 due on the first of each month. The Tenant provided a security deposit of \$1,325.00 on July 26, 2022, which the Landlord holds in trust.

Interest of \$28.93 has accumulated on the deposit to the date of this hearing, for a total deposit of \$1,353.93.

I find there are no condition inspection reports available for the rental unit. The Landlord relies on the photographs of the rental unit submitted as evidence.

Based on the testimony and evidence supplied by the parties, I find the Landlord failed to fulfill their obligation to complete a move in and move out inspection related to this

tenancy as required under sections 23 and 35 of the Act. Therefore, the Landlord has extinguished their right to hold the deposit for damages to the unit.

However, I find the Landlord has also filed claims against the deposit for cleaning and unpaid utility bills within their September 9, 2023 application, which was filed within 15 days as required by the Act. Since some of the Landlord's claims are not related to damages to the unit, I find the Landlord is not required to return double the deposit to the Tenant.

According to Policy Guideline 17, if the Landlord establishes a claim for damages to the rental unit, it may still be set off from the security deposit.

The Landlord's claims are as follows:

Claim	Amount
carpet cleaning and trim repair	\$231.00
replacing blinds in master bedroom	\$200.00
pest control for silverfish	\$159.00
hydro	\$130.67
cable	\$268.80
fridge door repair	\$219.45
TOTAL	\$1,208.92

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 Tenant agrees they owe \$130.67 for hydro and \$268.80 for cable. They say they were awaiting the bills to see the correct amount owing. As such, I grant the Landlord a monetary award under section 67 of the Act in the amount of \$399.47 for hydro and cable as claimed.

The Tenant provided testimony and evidence that they paid for a cleaning service and left the rental unit clean at the end of the tenancy as required by section 32 of the Act, including the carpets.

I accept the Tenant's evidence and testimony that they left the unit reasonably clean at the end of the tenancy. I find the Landlord has not provided evidence that the Tenant

was required to have the carpets “professionally” cleaned at the end of the tenancy. Therefore, I dismiss the Landlord’s claim for carpet cleaning.

The Tenant says the trim was probably already damaged at the start of the tenancy and if not, it was “wear and tear.” The Tenant says the blinds were not in good condition at the start of the tenancy. The Tenant says silverfish were present in the rental unit at the start of the tenancy and they sent messages to the Landlord to notify them, although they did not know they were called “silverfish” at that time. The Tenant says the fridge was already scratched and dented when they moved in.

I find the Landlord has not provided sufficient evidence of the condition of the trim, blinds or refrigerator at the beginning of the tenancy to establish that the damage was caused by the Tenant. Therefore, I decline to award the Landlord compensation for replacing the blinds or repairing the trim and refrigerator.

I accept the Tenant’s testimony and evidence that they encountered silverfish at the outset of their tenancy. I find the Landlord has failed to present evidence to establish that the Tenant was responsible for the silverfish infestation. Therefore, I decline to award the Landlord compensation for pest control.

In summary, I find the Landlord has established a claim for compensation under section 67 of the Act in the amount of \$399.47. I dismiss the remainder of the Landlord’s claims, without leave to reapply.

As the Landlord was only partially successful in their application, I find that the Landlord is entitled to recover \$50.00, which is half of their filing fee paid for this application under section 72 of the Act.

Therefore, under section 72 of the Act, I allow the Landlord to retain \$449.47 from the Tenant’s security deposit in full satisfaction of their claims.

I find the Tenant is entitled to a Monetary Order for the return of the balance of their security deposit under sections 38 and 67 of the Act, in the amount of \$904.46 as follows:

Monetary Award	Granted Amount
total deposits plus interest, held by the Landlord	\$1,353.93
set off for compensation claimed by Landlord under section 67 of the Act	- \$399.47
Landlord’s partial filing fee under section 72 of the Act	- \$50.00
a Monetary Order to return the balance of the deposit to the Tenant	\$904.46

Conclusion

I grant the Tenant a monetary order in the amount of **\$904.46** on the above terms. To enforce this order, the Tenant must serve a copy of the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, it 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 30, 2024

Residential Tenancy Branch