

## **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
- 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 also made an Application for Dispute Resolution under the *Residential Tenancy Act* (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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service**

The Landlords acknowledged receipt of the Tenants' Dispute Notice and evidence. The Landlords testified that they served their Dispute Notice and evidence by registered mail on November 6, 2023. They provided 2 Canada Post tracking numbers in evidence. The Tenants acknowledged that the Landlords had sent the materials to their correct address. I therefore find pursuant to sections 88, 89, and 90 of the Act that the Tenants were served with the Landlords' Dispute Notice and evidence on November 11, 2023.

### **Background and Evidence**

The tenancy started on May 1, 2023. Rent was \$2,200.00 per month due on the first of the month. The Tenants paid a security deposit of \$1,100.00. Utilities were not included in the rent and the Tenants were responsible for 30% of the utilities bill. The tenancy ended on October 31, 2023.

The Landlords returned \$900.00 of the Tenants' security deposit on October 29, 2023. The Landlords testified that they kept \$200.00 of the security deposit as they had not received the latest utilities bill by the date the tenancy ended on October 31, 2023.

The Landlords provided a utilities bill in evidence dated November 7, 2023. The total amount of the utilities bill is \$687.08, and the Landlords testified that the Tenants were responsible for \$206.00 of the bill.

The Landlords filed their Application for Dispute Resolution on November 2, 2023.

The Tenants disputed that they owed \$206.00 for utilities. Further the Tenants filed a claim for compensation pursuant to section 67 of the Act. The Tenants testified that the Landlords disturbed their right to quiet enjoyment of the rental unit. The Tenants testified that the Landlords showed the rental unit to prospective tenants on October 8, 11, 12, 14, and 29, 2023 and only provided the Tenants with a few hours' notice of these showings. The Tenants had a new baby and they testified that the entries on short notice were very disruptive.

## **Analysis**

### **Are the Landlords Entitled to Compensation for Unpaid Utilities and are they Entitled to Retain the Security Deposit?**

The Landlords returned \$900.00 of the Tenants' security deposit on October 29, 2023. They retained \$200.00 of the security deposit and filed an Application for Dispute Resolution on November 2, 2023, as required by section 38(1) of the Act. I find that the Landlords retained the security deposit for the sole purpose of paying the Tenants' share of the utilities bill.

The Tenants denied that they owed the money requested by Landlords for utilities. However the Tenants did not provide any evidence that they had paid the amount outstanding for utilities. The tenancy agreement was provided in evidence and utilities are not included in the agreement. The Landlords also provided a utilities bill dated November 7, 2023 which is for utilities from June 1, 2023 to September 30, 2023. I therefore prefer the evidence of the Landlords and find that they are entitled to compensation in the amount of \$200.00 for unpaid utilities as requested by the Landlords. I further find that the Landlords are entitled to retain the remainder of the security deposit to satisfy this amount.

### **Are the Tenants Entitled to Compensation Under Section 67 of the Act for Loss or Damage?**

Section 7 of the Act states that a landlord must compensate a tenant for a breach of the Act that results in loss or damage.

The Tenants are claiming \$3,000.00 in compensation as the Landlords breached the Act by not providing adequate notice to enter the rental unit to show the unit to prospective tenants. I further find that the Landlords entered the rental unit on 5 separate occasions without proper notice in contravention of the Act. I have also taken into account that the Tenants had a newborn baby at the time that the entries occurred, and the entries caused distress to the Tenants.

The Tenants have provided no evidence to establish why they are entitled to \$3,000.00 in compensation. There is no evidence before me that the Tenants suffered permanent damage due to these entries. The Tenants' rights under the Act were breached and they were caused significant inconvenience by the Landlords' actions. RTB Policy Guideline 16 allows me to award nominal damages when there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the Tenants were inconvenienced by the entries into the rental unit and therefore I award the Tenants nominal damages in the amount of \$200.00.

### **Is Either Party Entitled to Recover the Filing Fee for Their Application?**

As both parties were successful in their application and based on section 72 of the Act, I find they are both entitled to recover the \$100.00 filing fee. As both parties were successful, these amounts are offset.

### **Conclusion**

The Landlords are entitled to \$200.00 compensation for unpaid utilities and are entitled to retain the security deposit for that purpose.

The Tenants are granted a Monetary Order in the amount of \$200.00 as compensation for loss or damage under section 67 of the Act.

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 9, 2024

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Residential Tenancy Branch