

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 Tenants attended this hearing. The Landlord and the Landlord's Agent (the Agent) attended this hearing. The Agent is the Landlord's son.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

In a substituted service decision dated September 25, 2023 the Landlord was awarded authorization to serve Tenant V.G. at the email address located on the cover page of this Decision. The Agent testified that the Landlord served Tenant V.G. with the Landlord's Proceeding Package and evidence via email on September 28, 2023. The Landlord entered into evidence an email dated September 28, 2023 serving the above documents.

Tenant V.G. testified that he did not receive the above email and attached documents. The Landlord entered into evidence a read receipt for the above email which states that the serving email was opened on September 28, 2023.

Based on the September 28, 2023 email entered into evidence I find that Tenant V.G. was served in accordance with the substituted service decision. Based on the read receipt I find that Tenant V.G. received the September 28, 2023 email on September 28, 2023.

The Landlord did not apply for substituted served for Tenant T.C. The Agent testified that Tenant T.C. was served with the Proceeding Package and evidence at Tenant T.C.'s email address. Tenant T.C. testified that she did not receive the above

documents. No service agreement allowing the Landlord to serve Tenant T.C. was entered into evidence.

I find that the Landlord did not have authorization to serve Tenant T.C. via email as no service agreement was entered into evidence and the Landlord did not apply for substituted service. I find that the Proceeding Package and evidence were not served on Tenant T.C. in accordance with the Act. I therefore remove Tenant T.C. from this cause of action.

The Tenants did not submit any evidence for consideration.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order 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 the Landlord entitled to recover the filing fee for this application from the Tenant?

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 May 1, 2022, with a monthly rent of \$1,250.00, due on first day of the month, with a security deposit in the amount of \$625.00.

Both parties agreed that the Tenants agreed to pay the Landlord \$1,250.00 on May 1, 2022 and again on June 1, 2022. Both parties agreed that the Tenants were not required to pay any rent for July 2022. The Landlord entered into evidence a fixed term tenancy agreement starting May 1, 2022 and ending August 1, 2022.

Both parties agreed that this tenancy agreement was entered into following the Landlord serving the Tenant with a notice to end tenancy for a different rental property. Both parties agree that in exchange for the Tenants withdrawing their application for dispute resolution regarding the notice to end tenancy and moving out of the previous rental property, the Landlords agreed to sign the above fixed term tenancy agreement with the Tenants.

The Agent testified that the Tenants were supposed to move out August 1, 2022 but that on July 24, 2022 told the Landlord that they needed an extension until August 7, 2022. The Agent testified that on August 7, 2022 the Tenants requested another extension until August 13, 2022.

The Agent testified that he was not able to move into the rental property for August 1, 2023 as planned and had to stay and pay his rent at another location for the month of August.

Tenant V.G. testified that the lease was meant to end at the beginning of August 2022 and that when the lease was signed, he told the Landlord that since he was moving out of Province, he might need a few more weeks. Tenant V.G. testified that the Landlord agreed to provide the Tenants with any needed extension. Tenant V.G. testified that the end of the fixed term tenancy was set as August 1, 2022 on the lease but both parties agreed to extensions if needed. Tenant V.G. testified that the arrangement was agreed to via text and verbal conversations. Neither party entered into evidence text conversations regarding the formation of the tenancy agreement or regarding requested extensions.

Tenant V.G. testified that when he asked the Landlord for another week or two, the Landlord agreed to the requested extension in exchange for rent for the extended period. Both parties agreed that Tenant V.G. paid the landlord ½ month's rent for August 1-15, 2023 and that the Tenants moved out on August 13, 2023.

The Agent testified that the tenancy agreement requires the Tenant to pay a monthly rent. The Agent testified that because the Tenants did not move out on August 1, 2022, they are responsible for the entire month's rent. The Agent testified that the Landlord is entitled to the whole month's rent as per the contract and is seeking \$625.00 for the other half of August 2022's rent.

The Agent testified that the Tenants did not clean the subject rental property at the end of the tenancy and left bags of garbage and a mattress at the rental property. The Agent testified that the Landlord hired a professional to clean the rental property and to remove the garbage and mattress. A receipt for same in the amount of \$440.00 was entered into evidence.

Tenant V.G. testified that he left two bags of garbage at the rental property because the outside garbage bins were full and he did not want animals to get into the garbage. Tenant V.G. testified that he left a mattress at the rental property. Tenant V.G. testified that the remainder of the rental property was left clean. The Landlord did not enter into evidence any photographs showing the cleanliness of the unit. The Landlord did not enter into evidence a move out condition inspection report and testified that one was not completed.

The Landlord entered into evidence a text message from V.G. to the Landlord which states:

For the “garbage”, I would like to have a list of what garbage was left. To our knowledge, we left a mattress (\$20 dump fee at city dump, plus \$5-\$10 in gas to drive to the dump), and two garbage bags which we could not put inside the trash bin because it was full. I could have put those outside, and then the raccoons and rats would have opened them and made a mess. In addition, we left some cleaning supplies that you could have used (spray cleaner, broom and dustpan, etc...)

I am offended that you are suggesting that it cost you \$500.00 for cleaning, [Tenant T.C.] and I worked very hard to clean the place well before

The Agent testified that after the Tenants moved out the Landlord had the ducts cleaned which cost \$470.40. The Agent testified that they are seeking this amount from the Tenants. The Landlord testified that the Tenants had COVID symptoms such as sneezing and coughing when they moved out and he was very concerned about getting COVID so he had the ducts cleaned. The Agent testified that he was unsure when the ducts were last cleaned.

Tenant V.G. testified that he and tenant T.C. did not have COVID symptoms when they moved out. Tenant V.G. testified that duct cleaning is the Landlord’s responsibility.

Both parties agree that in a previous Decision from the Residential Tenancy Branch, an Arbitrator found that the Landlord received the Tenants’ forwarding address on July 6, 2023. Both parties agree that the forwarding address provided by Tenant V.G. is the address of the property the Tenant resided in before moving to the rental property and in which the Landlord currently resides. Tenant V.G. testified that he has mail forwarding set up at that address and that it remains his correct forwarding address. The Landlord testified that he sent Tenant V.G. an item via mail at the forwarding address and that the Landlord received it and it was not forwarded to Tenant V.G. so the forwarding address is not valid.

The Landlord filed for authorization to retain the Tenants’ security deposit on July 19, 2023. The Parties testified that the security deposit was transferred from the previous tenancy to this tenancy. Both parties agree that the Tenant paid the security deposit in installments from between 2015 and 2022. The Parties were unable to provide the dates of the installments.

Analysis

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 57(3) of the Act states:

(3)A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Based on the testimony of both parties, I find that the tenancy was supposed to end on August 1, 2022. I find that Tenants overheld the rental property until August 13, 2022 and agreed to pay the Landlord \$625.00 for that overholding in accordance with section 57(3) of the Act. I find that under section 57(3) of the Act the Landlord is not entitled to recover rent for the remainder of the month after the Tenants vacated the rental property. The Landlord's application to recover the remaining \$625.00 is therefore dismissed without leave to reapply.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, without 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 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

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 testimony of the Parties, I find that the Tenants left two bags of garbage and a mattress at the rental property contrary to section 37(2)(a) of the Act. The testimony of the parties regarding the cleanliness of the rental property, other than the agreed items left behind, is in dispute. I find that the Landlord has not met the burden of proof to prove that the property was left dirty as the Landlord did not complete a move out condition inspection report with the Tenants and has not provided documentary evidence such as photographs to prove the cleanliness of the rental property at the end

of the tenancy. I find that the text message between the parties supports the Tenants' version of events. I find that the Landlord has not proved, on a balance of probabilities, that the Tenants left the rental property dirty.

The receipt for cleaning and garbage and mattress removal entered into evidence is not itemized. It is not possible for me to determine what portion of the receipt applies to garbage and mattress removal and what part to cleaning. I therefore find that the Landlord had failed to prove the amount of or value of the loss suffered.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where 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 while the Landlord has not proved the value of the loss suffered, the Landlord has proved that there has been an infraction of the Landlord's legal rights under section 37(2)(a) of the Act. I award the Landlord \$100.00 in nominal damages for the removal of the garbage and mattress from the rental property.

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 \$100.00.

Residential Tenancy Branch Policy Guideline #1 states that the landlord is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary. I find that duct cleaning is the Landlord's responsibility. I find that the Landlord has not proved that the Tenants were ill during their short tenancy or that their short tenancy resulted in a more frequent than normal need for duct cleaning. I therefore dismiss this claim without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was 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.

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

Whether valid or invalid, I find that Tenant V.G. was found to have provided his forwarding address to the Landlord on July 6, 2023. The Landlord filed for authorization to retain the Tenants' security deposit on July 19, 2023.

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a

landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was provided on July 6, 2023 and the Landlord made their application on July 19, 2023, I find that the Landlord made his application within 15 days of the forwarding address being provided. I therefore find that the Landlord was permitted to retain the Tenants' security deposit while waiting for this Decision.

Under section 72 of the Act, I allow the Landlord to retain \$200.00 from the Tenant's security deposit in satisfaction of the monetary claim awarded to the Landlord. I Order the Landlord to return the remaining \$425.00 to Tenant V.G.

I am unable to calculate interest due to Tenant V.G. as the dates and amounts of the security deposit installments paid to the Landlord were not provided in the hearing.

Conclusion

I grant Tenant V.G. a Monetary Order in the amount of **\$425.00** 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 | -\$100.00 |
| 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 | \$200.00 |
| a Monetary Order for the Tenant for the return of their deposit(s) from the Landlord | \$425.00 |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act | -\$100.00 |
| Total Amount | \$425.00 |

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

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

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: February 6, 2024

Residential Tenancy Branch