

DECISION

Introduction

This hearing dealt with the Tenant's 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
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act

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
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the tenant's evidence was not served to the landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

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 a Monetary Order for compensation for damage or loss under 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?

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

Background and Evidence

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

Both parties agree that the monthly rent was \$1664.60 and a \$800.00 security deposit. The Landlord provided a copy of the tenancy agreement showing the tenancy started September 1, 2016.

Both parties agree that the Tenant vacated the rental unit on August 5, 2023, and that the Tenant provided a forwarding address to the Landlord on August 8, 2023.

Both parties agree that the Tenant was renting month to month and that the Landlord never gave the Tenant a notice to end tenancy.

Both parties agree that the Tenant did not pay rent for July 2023; The Tenant affirms not paying because the Landlord offered her two rent free months if she vacated by the end of July 2023. The Landlord denies making this offer and both parties agree there was no written agreement regarding this matter.

The Landlord provided a copy of the Tenant's notice to end tenancy dated June 24, 2023. It states a move out date of July 31, 2023. The Landlord states that, in addition to rent for July 2023, he is owed rent for August 2023, as the Tenant was still in the rental unit on August 31, 2023.

The Landlord affirms that a condition inspection report was done at move in, but that one was not completed on move out because the Tenant refused to complete one. The

Tenant affirms that condition inspection reports were not done on move in, nor move out, and that the Landlord never offered to do either one.

The Landlord did not provide a copy of any condition inspection report.

Both parties agree that the Tenant caused water damage to a roughly 35 square foot section of the parquet flooring in the living room that necessitated its replacement.

The Landlord affirms that, because the flooring was old, the flooring was no longer in production and thus the entire living room and connecting hallway had to be replaced, an area of roughly 420 square feet. He provided a receipt for \$892.09 of flooring material. He requests \$400.00 for the 10 hours he spent replacing the flooring.

The Landlord provided pictures of the water damaged section but no pictures of the rest of the floor that had the parquet flooring replaced.

The Landlord affirms that, for 5 days, he helped the Tenant move out because she did not hire a proper moving company. The Tenant affirms the Landlord helped for 3 days, not 5 days. The Tenant affirms the Landlord offered and that she never asked for his help. The Landlord requests \$1000.00 in compensation for his time and labour helping them move out, \$200.00 per day.

Analysis

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

The Tenant did not present any evidence that she suffered damage or loss due to the Landlord's noncompliance with the Act, the regulations or their tenancy agreement.

Therefore, the Tenant's application for a Monetary Order for compensation for damage or loss is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Under section 35 of the Act, at the end of the tenancy the landlord must complete a condition inspection report in accordance with the regulations. Furthermore, if the tenant refuses to participate after being given two opportunities, the landlord may make the inspection and complete and sign the report without the tenant.

The Tenant affirms that neither a move in nor move out condition inspection report was done, while the Landlord affirms one was done on move in, but not on move out due to the Tenant's refusal to do one.

As the Landlord did not provide a copy of the move in condition inspection report he affirms was done, and the Tenant affirms one was not done, nor was she offered an opportunity to do one, I find it more plausible that condition inspection reports were not done on move in and I find the Landlord's right to claim against the security deposit for damages to be extinguished.

Furthermore, section 38(1) of the Act states that with 15 days of the of the tenancy ending, or being provided the Tenant's forwarding address, whichever is the later, the landlord must return the security deposit or make an application for dispute resolution claiming against the security deposit.

The Landlord received the Tenant's forwarding address, in writing, on August 8, 2023, but did apply for dispute resolution until November 17, 2023, more that 15 days after the tenancy ending and receiving a forwarding address.

Under section 38(6) of the Act, if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Therefore, I find the Tenant is entitled to the return of double her security deposit, $(\$800.00 \times 2) + \9.06 of interest = \$1609.06.

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

Both parties agree that the Tenant did not pay rent for July 2023, and the Tenant was unable to provide sufficient evidence that she had the Landlord's permission to do so

Thus, I find that the landlord has established a claim for \$1664.60 in unpaid rent for July 2023.

However, the Tenant gave the Landlord a notice to end tenancy that fit the requirements of section 45 and 52 of the Act and gave a move out date of July 31, 2023. Therefore, I find the tenancy ended on July 31, 2023, and that the Tenant overheld until August 5, 2023. Thus, the Landlord is not entitled to rent for August 2023.

I find the landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act in the amount of \$1664.60.

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

As the Tenant admits responsibility for the water damaged section of flooring, I find the Landlord is entitled to compensation. However, because the Landlord did not provide photographs showing the condition of the rest of the flooring before it was replaced, I find the Landlord is not entitled to the full \$1,292.09 he is requesting.

As the replace flooring is roughly 420 square feet, and the Landlord provided a receipt of \$892.09 for flooring, the per square foot cost of flooring is \$2.12 per square foot.

I find the Landlord is entitled to this amount for 40 square feet, the amount of the flooring with water damage, for an amount of \$84.80.

For the remaining 380 square feet, I have no pictures to show the condition of the flooring prior to replacement, or to support that the Landlord's claim that a transition strip could not be used to limit the amount of flooring to be replaced. Furthermore, I will take into consideration Policy Guideline 40's 20 year useful life for parquet flooring and the fact that the flooring was not replaced during the Tenant's 7 year tenancy. I find

\$784.74 to be an appropriate amount of compensation for the remaining 380 square feet.

I find the Landlord is entitled to \$869.54, in total, for flooring material.

The Landlord affirms he spent 10 hours replacing the flooring. I find he is entitled to 10 hours at the B.C. minimum wage as compensation for this labour, $10 \times \$16.75 = \167.50 .

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 \$1,037.04.

Is the landlord entitled to a Monetary Order for compensation for damage or loss under the Act?

The Tenant overheld the rental unit from August 1, 2023, to August 5, 2023. I find the Landlord is entitled to 5 days of compensation as follows: $(\$1664.60 \times 12)/365 = \54.73 per day and $\$54.73 \times 5 = \273.65 .

Regarding the Landlord's claim for \$1000.00 for labour and lost time due to helping the Tenant's move out, I find the Landlord is not entitled to compensation as he was under no obligation to help the Tenant move out, but rather chose to help.

I find the landlord is entitled to a Monetary Order for compensation for damage or loss under the Act in the Amount of \$273.65.

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

As the Landlord was partially unsuccessful in this application, the Landlord's application for authorization to recover the filing fee for this application from the under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I find the Tenant is entitled to the return of her security deposit, doubled, plus interest on the initial security deposit, an amount of \$1609.06.

I grant the Landlord a Monetary Order in the amount of **\$2,974.57** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$1664.60
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	\$1,037.04

a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$273.65
Total Amount	\$2,975.29

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.

The Landlord may retain the \$1609.06 of doubled security deposit and interest as partial satisfaction of the monetary order.

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 16, 2024

Residential Tenancy Branch