

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 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
- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fees for this application from the Landlord under section 72 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 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) 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 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 the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

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

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

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 Tenants vacated the rental unit on August 31, 2023, and provided the Landlord with a forwarding address that same day.

Both parties agree that a condition inspection report was not done at move in, nor was one done at move out. The Landlord tried to arrange one at move out but the Tenant refused as one had not been done at move in.

The Tenant provided a copy of the Two Month Notice, it is signed May 30, 2023, with a move out date of August 31, 2023. The Landlord has checked two reasons for giving the Notice, the rental unit has been sold and the purchaser has asked the landlord to give the notice, and the rental unit will be occupied by the father or mother of the landlord or landlord's spouse.

The Landlord confirms trying to sell the rental unit when the Notice was given to the Tenant but that a sale was never finalised. He further affirms that the main reason for

giving the Notice was so his parents could move into the rental unit. His parents were not planning to purchase the rental unit.

The Landlord affirms that after serving the Notice his father died in China on July 18, 2023, and his mother decided in August 2023 that she did not want to come to Canada without him. He provided a copy of his father's death certificate in support of this.

Both parties agree that the Landlord never informed the Tenant of the change in plans prior to the Tenant's vacating the rental unit.

The Landlord states that the Tenant should return the one month compensation that was given as part of the Two Month Notice procedure because the Tenant changed the locks on the rental unit and the Landlord felt he should have given a One Month Notice for Cause instead. The Landlord affirms the Tenant changing the locks made it difficult to show the rental unit.

The Tenant affirms he changed the locks at the beginning of the tenancy and that the Landlord was made aware of this when it was done. He affirms not giving the Landlord keys because the Landlord never asked for a set. The Tenant further affirms being cooperative with showings until the last month of the tenancy when the number of showings became excessive.

The Landlord requests \$2,940.00 in damages to the walls. The Landlord provided several pictures showing a crack in the wall as well as chipped drywall on wall corners and dints and tack or nail holes in the walls. In addition, a picture shows a projector installed in the ceiling of one room. The Tenant confirms installing the projector and that it left several screw holes in the ceiling, but he affirms that the remainder of the damages shown in the pictures, or described by the Landlord, existed when the Tenant moved into the rental unit at the start of the tenancy.

The Landlord confirms that, prior to the painting done after the Tenant vacated, the rental unit had not been painted since he bought it in 2010. The Landlord provided a copy of a receipt for \$2940.00 for painting. The Landlord affirms that the entire rental unit was painted including the majority of ceilings.

The Tenant requests to be compensated \$750.00 of rent after receiving an illegal rent increase from \$2500.00 to \$2600.00. The Tenant provided a copy of the previous tenancy agreement showing \$2500.00 in monthly rent and a copy of the last tenancy agreement showing \$2600.00 in monthly rent.

Analysis

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) OR 51.4 of the Act states that if a tenant is given a notice to end tenancy under section 49 OR 49.2 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the tenant has established their claim for compensation related to a notice to end tenancy where the landlord did not accomplish the stated purpose or comply with the Act.

The Landlord indicated, on the Two Month Notice, that it is was being given for two different reasons: 1) the sale of the rental unit had been finalised and the purchaser has asked the Landlord to serve the Notice, and 2) the landlord's parents intend to occupy the rental unit.

I believe the Landlord's parents intended to occupy the rental unit. Furthermore, I find that the father's passing and the mother's deciding not to move to Canada because of this, are extenuating circumstances preventing the accomplishment of a stated goal.

However, the Landlord indicated two reasons for giving the Notice. The extenuating circumstances that prevented the Landlord's parents from moving in, did not prevent the finalisation of a sale prior to the issuance of the Notice.

I find that if the Landlord gives two different reasons for the serving of a Two Month Notice, for the Landlord to not be held liable for 12 months compensation, one of the stated goals must be accomplished, or each stated goal must have extenuating circumstances preventing their accomplishment. In this case the Landlord has not completed either stated goal, and has extenuating circumstances that apply to only one of the stated goals. Furthermore, I question the intentions behind the issuance of the Notice, as the required purchaser, who must request the issuance of the Two Month Notice in writing, did not exist; a fact the Landlord was aware of when serving the Notice.

Therefore, I find the tenant is entitled to 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, in the amount of \$31,200.00.

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

The Tenant signed a new tenancy agreement on June 30, 2022, with a rent \$100.00 higher than the previous tenancy agreement. This is not an illegal rent increase as under section 43 of the Act a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. I find that the Tenant signing the new tenancy

agreement with the higher rent equates to the Tenant agreeing, in writing, to the amount of the rent increase.

The Tenant's claim is dismissed, without leave to reapply.

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

I find that the Landlord did not provide sufficient evidence that the damage in question was caused by the Tenant. Without a condition inspection report, and with the Tenant's affirmation that he left the rental unit in the same condition it was in at move in, I am unable to determine that the damage was caused by the Tenant.

Although the Tenant agrees he installed the projector in the ceiling, I find the screw holes and damages caused by its installation, to be a minor amount of damage similar to what existed on walls throughout the rental unit, and that it is impossible to determine its monetary value as a portion of the \$2940.00 the Landlord chose to spend when he decided to paint almost the entirety of the rental unit.

The Landlord extinguished their right to claim against the security deposit for damages when they did not complete a move in condition inspection report.

The Landlord's claim is dismissed, without leave to reapply.

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

The Tenant is entitled to one month compensation when given a Two Month Notice. The fact that the Landlord feels he should have given the Tenant a One Month Notice for Cause because they changed the locks does not change the fact that he issued a Two Month Notice that the Tenant vacated because of.

Furthermore, as the Landlord indicated on the Two Month Notice that a sale had been finalised, the Landlord cannot claim that the Tenant's changing the locks made it difficult to show the rental unit, because if a sale had been finalised there was no longer a reason to show the rental unit and no loss could result from showing it.

The Landlord's claim is dismissed, without leave to reapply.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

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

As the tenant was successful in their application, I find that the tenant is entitled to recover both of their \$100.00 filing fees paid for these applications under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$32,650.00** under the following terms:

Monetary Issue	Granted Amount
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	\$31,200.00
a Monetary Order for return of the Tenant's Security Deposit	\$1250.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act (x2)	\$200.00
Total Amount	\$32,650.00

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 is dismissed in its entirety, 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 7, 2024

Residential Tenancy Branch