

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
- 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

This hearing also 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
- An order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served on August 16, 2023, by registered mail in accordance with section 89(1) of the Act and deemed received the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that the Tenant was served on October 6, 2023, by email as the Landlord was approved by substitute service and deemed received the third day. The Landlord provided a copy of the decision approving substitute service and a proof of service form.

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. During the first hearing on November 27, 2023, the Tenant advised the Landlord sent their evidence via Google Drive, which the Tenant was unable to open. The Landlord advised they also sent it via email in PDF format. The Tenant advised they were ready to proceed without being able to review the evidence. The Landlord's case was not presented until the second hearing and at the conclusion of the first hearing the Landlord was ordered to provide the Tenant with the evidence via registered mail, which the Tenant confirmed they received. Based on the above I have considered the Landlord's evidence.

Preliminary Matters

- Tenancy Ended

The parties advised the tenancy ended August 31, 2023. Therefore, I find the Tenant's claim to have the Landlord comply with the Act, regulations or tenancy agreement is moot. As such, I dismiss this claim without leave to reapply.

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 a Monetary Order for compensation?

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

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

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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

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, 2023, with a monthly rent of \$6,490.00, due on first day of the month, with a security deposit in the amount of \$3,245.00. This tenancy ended August 31, 2023. The Landlord lives in the basement on the property where the rental unit is located.

The Tenant filed an application for compensation for loss of quiet enjoyment and the Landlord filed a cross-application claiming unpaid rent, damages, compensation and requesting to retain the security deposit.

Security Deposit

The Landlord argued that no move-in condition inspection report was completed, but the Tenant sent representatives who did a thorough walkthrough and signed a paper stating "There are no damages found except one. The freezer door does not close properly". The Landlord argued they provided the Tenant's representatives with a formal move-in report for the Tenant to complete on their own and return it to the Landlord, but this was not done. The Landlord argued that no move-out condition inspection report was completed because the Tenant was in a rush to leave. The Landlord argued they did not receive a full and correct forwarding address from the Tenant until November 2023. The Landlord argued it was missing the postal code and they were originally given an address that did not exist.

The Tenant argued no move-in or move-out report was completed with the Landlord. The Tenant argued their representatives felt forced to sign the paper upon move-in as the Landlord would not provide the keys unless they signed the document. The Tenant argued they asked the Landlord to do a move-out report on the move out date, but the Landlord advised one was not needed. The Tenant argued they provided their forwarding address via email and the Landlord could have contacted them if there was an issue with the forwarding address or googled the postal code. The Tenant sent an email September 5, 2023, with the forwarding address, but it was missing the postal code. A copy of the email address was provided into evidence.

Unpaid Rent

The parties agreed the Tenant only paid half the rent for August 2023 and asked the Landlord to use the damage deposit towards the other portion of August 2023 rent, but the Landlord declined. The Landlord is requesting \$3,245.00 for the unpaid portion of August 2023 rent.

The Tenant argued they could only pay half because they needed to pay the damage deposit and their new rental unit.

Damages

The Landlord is seeking the following damages:

Item	Description	Amount
1	Carpet Cleaning	\$450.00
2	Front Door Panel	\$150.00
3	Front Door Lock	\$50.00
4	Sliding Bathroom Door	\$190.00
5	Toilet Seat	\$30.00
6	Family Room Wall	\$470.00
7	Broken Blinds	\$50.00
8	Bathroom Floor	\$40.00
9	Remote	\$33.00
10	Master Bedroom Door	\$75.00
11	Oil Stains	\$50.00
12	Kitchen Counter	\$50.00
13	Kitchen Tap	\$150.00
14	Window	\$30.00
15	Pet Stains	\$50.00
16	Stains and Garbage	\$75.00
17	Missing and Broken Lightbulbs	\$50.00
18	Cleaning	\$575.00
19	Moving In fee	\$495.00
	TOTAL	\$2,445.00

#1 Carpet Cleaning/ #15 Pet Stains

The Landlord's position is that the Tenant and their roommates left the carpet stained and there was pet urine. The Landlord provided an invoice from the carpet cleaning company, photographs and an email from the carpet cleaning company advising there was pet urine stains. The Landlord advised the carpet was 5 years old.

#2 Front Door Panel

The Landlord argued the door was old, but the panel underneath was removed. A handwritten invoice was provided as evidence.

#3 Front Door Lock

The Landlord argued the Tenant changed the front door lock and when they replaced it with the original lock the wood was chipped. A handwritten invoice was provided as evidence.

#4 Sliding Bathroom Door

The Landlord argued there was a crack on the door. The Landlord advised the door was around 30 years old. A photograph and handwritten invoice were provided as evidence.

#5 Toilet Seat

The Landlord argued the toilet seat had scratches and scuffing on it. A photograph was provided as evidence.

#6 Family Room Wall

The Landlord argued there were dents on the wall. A photograph and handwritten invoice were provided as evidence.

#7 Blinds

The Landlord argued blinds were cracked and falling in 3 bedrooms. The Landlord advised the blinds were 5 years old. A photograph and handwritten invoice were provided as evidence.

#8 Bathroom Floor

The Landlord argued there were cracks on the bathroom floor and advised the floor was around 5 years old. A photograph and handwritten invoice were provided as evidence.

#9 Remote

The Landlord argued a universal remote was provided during the tenancy but was not returned. The Landlord advised they did not have a list all items provided at the start of the tenancy.

#10 Master Bedroom Door

The Landlord argued the lock on the master bedroom door did not lock properly and had to be replaced. The Landlord advised the door was about 5 years old.

#11 Oil Stains

The Landlord argued the Tenant and their roommates left oil stains on the driveway. A handwritten invoice was provided as evidence.

#12 Kitchen Counter

The Landlord argued the kitchen counter had a burnt spot on it and the counter is about 15 years old. A handwritten invoice was provided as evidence.

#13 Kitchen Tap

The Landlord argued the rubber on the kitchen tap was cracked and advised the kitchen tap was around 5 years old. A pricelist from The Home Depot was provided.

#14 Window

The Landlord argued the window was not cleaned properly.

#16 Stains and Garbage

The Landlord argued there were yellow stains and garbage left behind. The Landlord argued the amount requested was an estimate and no invoice was provided.

#17 Missing and Broken Light Bulbs

The Landlord argued lightbulbs were missing and some were left broken.

#18 Cleaning

The Landlord argued the entire rental unit had to be cleaned. A handwritten invoice was provided as evidence.

#19 Move-In fee

The Landlord argued the Tenant agreed when they signed the tenancy agreement to pay \$495.00 for the professional cleaning at the beginning of the tenancy. The Tenant advised they originally agreed to this but after everything that happened during the tenancy, they do not agree to pay this.

The Tenant's position on all the damage claims is that because a full move-in condition inspection report was not completed there is no way to compare the condition of the rental unit before moving in and upon move out. Additionally, the Tenant disputes that any of the damage was done during the tenancy and argued they existed before they moved in. Furthermore, the Tenant argued none of these damages were brought to their attention when they were moving out.

Landlord's Compensation Claim

The Landlord is seeking \$6,490.00 as they argued the rental unit was not rentable for September 2023 after the Tenant vacated because the rental unit needed repairs and cleaning. The Landlord argued the repairs started the first week of September 2023 and the repairs took 2 to 3 weeks to complete.

The Tenant's position is that the rental unit did not need any cleaning or repairs when they vacated.

Tenant's Compensation Claim

The Tenant is seeking \$8,490.00 in compensation for lack of quiet enjoyment and disturbance of privacy. The Tenant's position is that they provided the Landlord with a list of repairs in June 2023, and they were not completed until the Tenant and their roommates were preparing to move out, the Landlord questioned guests of the roommate, set up a camera, the Landlord would send emails complaining about every small thing and brought furniture into the Tenant's room without permission. Witness AB and Witness EM, who were roommates of the Tenant, confirmed that a camera was installed and the inquired about who was coming to the rental unit.

The Landlord argued they only spoke to 3 individuals because they came to their unit and asked about an Airbnb rental and where the address was. The Landlord's witness MA confirmed the Landlord spoke to one individual who was looking for their Airbnb rental, which was listed as the rental address. The Landlord argued they never set up a camera, only every knocked on the door of the rental unit and never entered the rental unit without giving proper notice first. The Landlord argued they knocked on the door around May 2023 because they noticed the Tenant had changed the lock on the door and wanted to inquire about why it was changed. Additionally, the Landlord argued the only other time was when their spouse RM, knocked on the door around July 2023 because the Tenant and their roommates were too loud. The Landlord advised they rarely had any noise complaints about the Tenant or their roommates other than the time in July 2023. The Landlord's spouse RM confirmed besides the one incident they rarely had any issues with noise complaints. The Landlord argued the only other times they were at the rental unit door was to pick up their mail or leave notices. The Landlord's position is that they came to the rental unit for the repairs and spoke to two of the roommates who advised they were no problems with anything in the rental unit.

Analysis

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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. To be awarded compensation for a breach of the Act, the tenant must prove the following 4 elements:

- the landlord 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 tenant acted reasonably to minimize that damage or loss

Loss of Quiet Enjoyment

Section 28 of the Act, states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following

- a. Reasonable privacy
- b. Freedom from unreasonable disturbance
- c. Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29;
- d. Use of common areas for reasonable and lawful purposes, free from significant interference

Policy Guideline #6 explains that a breach of quiet enjoyment is substantial interference with the ordinary and lawful enjoyment of the premises and temporary discomfort, or inconvenience does not constitute a basis for a breach of the entitlement of quiet enjoyment. When determining the amount by which the value of the tenancy has been reduced Policy Guideline #6 advises that an arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment and the length of time over which the situation existed.

Furthermore, both parties have presented equally probable explanations about the repair list, questioning of guests, invasion of privacy and complaints from the Landlord. Where one party provides a version of events in one way, and the other provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. There is nothing in the Act that prevents a landlord from discussing problems with a Tenant or knocking on the rental unit door. Additionally, I find that there was insufficient evidence to establish this was done excessively to rise to the level of impacting the right to quiet enjoyment. I find that there was insufficient evidence to establish that the landlord was harassing guests that visited the rental unit. Furthermore, I decline to award any compensation for the Landlord putting furniture in the Tenant's bedroom without permission. Based on the submissions of both parties, I find this to be a onetime occurrence which does not rise

to the level of breaching quiet enjoyment. Also, I find the Tenant has failed to provide any evidence to substantiate the amount of or value of the loss being sought.

Based on the above I decline to award any compensation for the breach of quiet enjoyment or privacy.

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

Section 20 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for half of August 2023. The Tenant does not dispute that they only paid half the portion of rent for August 2023. Based on the submission of both parties I do not find that the Tenant had a legal reason to withhold half month's rent. While the Tenant had offered that the remaining portion of August 2023 rent could be taken from the damage deposit, the Landlord did not agree to this. As stated in section 21 of the Act, a tenant cannot apply a security deposit as rent without the written consent of the Landlord.

Section 60 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 unpaid rent under section 60 of the Act, in the amount of \$3,245.00

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 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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

Damages #1-#18

Section 21 of the Regulation states that “in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has preponderance of evidence to the contrary”.

It is noted that the Tenant disputed the entirety of the Landlord’s claims. Rather, the Tenant’s position is that any purported damage was here prior to them occupying the rental unit. Given that the Landlord has not provided any condition inspection report completed at the start or the end of the tenancy and because the Landlord has not provided any preponderance of evidence regarding the state of repair and condition of the rental unit at the start of the tenancy, the Landlord has not proven any breach of the Act for the alleged damages. While the Landlord provided a written document that states “There are no damages found except one”, I do not find this to be a condition-inspection report. There was no itemized lists of the elements of the rental unit with the condition of each noted upon move-in. Without this itemized list there is nothing to show what the condition of the rental unit was like before the Tenant moved in. Based on the above I decline to award any damages for items #1 to #18 listed above.

#19 Moving In fee

The tenancy agreement states on page 2 “additional information: \$495 moving fee”. The Tenant argued that because of what happened during the tenancy they no longer agree to pay this amount; however, the Tenant advised they originally agreed to pay this amount. I find that the Tenant breached the tenancy agreement by not paying the \$495.00 moving fee as agreed to in the tenancy agreement, as such, I find that the Landlord suffered a loss and the I grant compensation in the amount of \$495.00.

Is the Landlord entitled to a Monetary Order for money owed for compensation under the Act, regulation or tenancy agreement?

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

Given that I have declined to award any compensation for damages. I find the Landlord has failed to establish that the rental unit was un-rentable due to damage caused by the Tenant, as such I decline to award compensation for any lost rent.

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

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.

A tenant is required to provide their written forwarding address to the landlord. In this case, I find the Tenant has not provided their forwarding address in writing to the Landlord. I am not satisfied that sending the forwarding address to the Landlord's email is sufficient, in the absence of a written agreement that service via email is acceptable. Service via email is acceptable under the Act only when it is agreed to by the parties. It is recommended parties agree to this, in advance, and in writing. There is no evidence this was agreed to. Since the Tenant's forwarding address was not properly provided to the Landlord, in writing, I find that the Landlord did make their application within the deadline required.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the submissions and evidence of both parties I find that no move-in or move-out condition inspection report was completed. I do not find that the handwritten note that states "There are no damages found except one. The freezer door does not close properly" is considered a condition inspection report. I find the Landlord did not comply with section 23(1) and 35(1) of the Act. Based on the submissions of both parties I find that the Landlords extinguished their right to the security and pet damage deposits. However, the Tenant did not provide their forwarding address in writing and is not entitled to double the security deposit.

As I have awarded compensation for the Landlord and based on section 72 of the Act, I will deduct the amount owed by the Tenant to the Landlord from the security deposit, plus any interest pursuant to section 4 of the Regulation.

Are the Landlords or Tenants entitled to recover the filing fee for their applications?

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 65 of the Act. The Tenant was not successful in their claim, and I decline to award the recovering the their filing fee.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$540.08** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 60 of the Act	\$3,245.00
a Monetary order for compensation or damages under section 60 of the Act	\$495.00
authorization to recover the filing fee for this application from the Tenant under section 65 of the Act	\$100.00
deduct the security deposit plus interest under section 72 of the Act	-\$3,299.92
Total Amount	\$540.08

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

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 21, 2024

Residential Tenancy Branch