

## **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 hearing also dealt with the Tenant's Application for Dispute Resolution under the Act for:

- 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

### **Preliminary Issues**

The Tenant made mention of a chandelier that he inadvertently left behind in the rental unit and which was not returned to him. As there is no application in respect of the chandelier, I have made no determinations on the issue. The parties are invited to attempt to resolve this matter between themselves.

### **Issues to be Decided**

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

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

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?

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

## **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 October 15<sup>th</sup>, 2022, with a monthly rent of \$3,200.00, due on first day of each month, for a fixed term ending on November 1<sup>st</sup>, 2023, and with a security deposit in the amount of \$1,600.00 and a pet deposit in the same amount.

The Landlord testified that he obtained an Order of Possession and Monetary Order through the direct request process pursuant to a 10 Day Notice. I have reviewed the decision in that application, and I find that decision found the tenancy came to an end on August 31<sup>st</sup>, 2023. The Monetary Order was in the amount of \$3,300.00 and related to the rent for July 2023 and the filing fee.

The Landlord testified that no rent was paid for September. On regaining possession of the rental unit, the Landlord found that the patio was dirty and stained, and that two locks were damaged or missing: one lock on the front door had been removed, and the patio door lock was broken.

The Tenant testified that he moved out of the rental unit on September 15<sup>th</sup>, that he had cleaners come in to clean on September 28<sup>th</sup>, and that he returned the keys and completed an informal walk-through of the rental unit with the Landlord on September 29<sup>th</sup>. The Tenant testified, and the Landlord agreed, that no final condition inspection report was completed.

The Tenant testified that, after moving into the unit, he found that one of the locks on the front door was not functioning correctly. He removed that lock. He also found that the lock to the patio door was broken. He attempted to repair it himself, but was unable to do so. The Tenant testified, and the Landlord agreed, that the tenant before himself had left the rental unit in poor condition due to dog urine, which required significant remediation at the beginning of his tenancy.

The Tenant submitted records of payments to the Landlord in late August, totalling \$6,300.00. He also showed a payment to the Landlord of \$200 on September 15<sup>th</sup>.

The Tenant testified that he gave the Landlord his forwarding address by text and email on October 3<sup>rd</sup>, 2023.

The Tenant also testified that he left a chandelier in the rental unit, and requested its return on October 5<sup>th</sup>, but that it has not been returned to him.

## **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

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

Section 26 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.

Because the Tenant was conclusively deemed to have accepted the end of the tenancy on August 31<sup>st</sup>, 2023, rent under the tenancy agreement was not due for September. Instead, the Tenant is obligated to pay for the use of the property on a per diem basis.

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.

The Tenant returned the keys on September 29<sup>th</sup>, and is thus responsible for 29 days of occupation of the rental unit. I calculate the loss as the monthly rent, multiplied by twelve months, divided by 365 days, multiplied by the 29 days of September occupation.

Therefore, I find the Landlord is entitled to a Monetary Order for overholding under section 67 of the Act, in the amount of \$3,050.96.

**Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss 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

In this case, the Tenant maintains that the locks were broken or broke during the course of the Tenancy, and that the Tenant removed one lock for safety, and tried to fix the other lock. The Landlord's pictures show the one lock was removed.

The Tenant also submitted that the patio stains existed prior to his tenancy. He submitted that the tenant before himself had dogs and had damaged the rental unit significantly.

I examined the initial condition inspection report and found that no item clearly referred to the condition of the patio, and there was no other documentary evidence of the condition of the patio at the beginning of the tenancy. I accept the Tenant's testimony that the patio stains predated his tenancy. While the Landlord testified otherwise, I find that the Tenant was in a better position to recall the condition of the patio at the

beginning of his tenancy. The patio damage is also consistent with the damage both parties agreed was present throughout the rental unit due to the prior tenant.

I find that the Landlord has not provided sufficient evidence to show that the broken locks were due to damage caused by the Tenant, and not due to previous damage, wear and tear, or a combination of the two.

As a result, the Landlord's application for compensation for damage or loss under the Act is dismissed.

**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 Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?**

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. If he does not do so, he must pay the Tenant double the amount of the deposits. As the forwarding address was provided on October 3<sup>rd</sup>, 2024, and the Landlord made their application on October 17<sup>th</sup>, 2024, I find that the Landlord made their application within the statutory limit of 15 days.

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.

A final condition inspection report was not completed, and thus the Landlord's right to retain the deposit is extinguished.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of their security deposit and pet damage deposit under sections 38 and 67 of the Act, together with interest calculated according to the regulations. I calculate the amount of interest to be \$71.90. I therefore award the Tenant a Monetary Order in the amount of \$3,272.14.

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

As the success was divided in their application, the Landlord's application to recover the filing fee paid for this application is dismissed.

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$221.18** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for the return of the Tenant's security and pet damage deposits, together with interest	\$3,272.14
(less) a Monetary Order for overholding for 29 days following the end of the tenancy	(\$3,050.96)
<b>Total Amount</b>	<b>\$221.18</b>

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

The Landlord's application to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award is dismissed, without leave to reapply.

The Landlord's application to recover the filing fee for this application from the Tenant 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 9<sup>th</sup>, 2024

---

Residential Tenancy Branch