

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

and 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
- 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(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 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 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 Tenant entitled to a Monetary Order awarding the return of their deposit.

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

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

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

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 the Tenant returned to the keys to the Landlord on October 4, 2023.

Analysis

Both parties agree that no written tenancy agreement exists and that rent was \$1400.00 per month with a \$700.00 security deposit.

Both parties agree that the Tenant's forwarding address was provided to the Landlord along with the Proceeding Package. The Landlord affirms it was received on October 26, 2023

Both parties agree the Tenant vacated and returned the key to the Landlord on October 4, 2023. The Landlord requests unpaid rent due for these 4 days at a per diem rate of \$45.00.

The Tenant affirms that at the end of August 2023 the Landlord requested that he begin paying \$400.00 a month more in rent. The Tenant affirms that neither a proper rent increase form nor three months notice was given. The

Tenant confirms he never paid the rent increase and chose instead to move out. Both parties agree that the Tenant's notice to end tenancy was given to the Landlord over the phone and that the Tenant was supposed to vacate the rental unit on September 3, 2023.

The Landlord affirms that the Tenant damaged the toilet seat, necessitating its replacement. The Landlord affirms the Tenant also damaged several walls in the rental unit and they required patching and repainting due to the Tenant's actions.

The Tenant denies both allegations and affirms both the toilet seat and the walls were in that condition at the start of the tenancy. The Landlord provided a receipt of \$1400.00 for painting and wall repair.

Both parties agree that no move in nor move out condition inspection reports were done.

The Landlord affirms that the Tenant left two rolls of carpet in the yard, along with multiple bags of garbage that needed to be taken to the dump because the city refused to take them. The Landlord provided a receipt for \$567.00 for garbage removal.

The Tenant denies leaving garbage and claims the carpet rolls were left by the Landlord.

Analysis

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

As the Tenant confirms staying in the rental unit until October 3, 2023 and returning the keys on October 4, 2023, where he was supposed to vacate the rental unit at the end of September, I find the Landlord is entitled a Monetary Order for unpaid rent for October 2023. However, as the Landlord is only requesting a per diem rate of \$45.00 for the 4 days of October 2023 that the Tenant maintained possession, I find the Landlord is entitled to a Monetary Order for unpaid rent as follows:

$$\$45.00 \times 4 = \$180.00$$

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

The Landlord's claim is partially for garbage removal. Garbage removal is cleaning. Cleaning is not damage; therefore, I dismiss this claim without leave to reapply.

As condition inspection reports were not done on move in, nor moveout, and the Tenant affirms the toilet seat and walls were in the same condition at the end of the tenancy that they were in at the start of the tenancy, I find the Landlord has provided insufficient evidence that the Tenant caused any damage to the rental unit. Therefore, I dismiss this claim 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?

The Landlord is entitled to retain part of the security deposit as satisfaction for the unpaid rent. However, the Landlord extinguished their right to claim against the security deposit for damages when they failed to conduct a move in and move out condition inspection report. Therefore, I find the Landlord is entitled to retain \$180.00 of the Tenant's security deposit as satisfaction of the owed unpaid rent for the period of October 1-4 of 2023.

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

Section 38 of the Act states a landlord must claim against the security deposit or return it to the tenant within 15 days of receiving the tenant's forwarding address, or the tenancy ending, whichever is later. If the landlord does neither, the landlord must pay the tenant double the amount of the security deposit.

Section 24 of the Act states the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete condition inspections on move in or move out.

I find the Landlord applied for dispute resolution before receiving the Tenant's forwarding address and they are entitled to claim against the security deposit for unpaid rent. However, I find the Landlord extinguished their right to claim against the security deposit as they did not complete the condition inspection reports, and they have not returned the security deposit within 15 days of receiving the Tenant's forwarding address on October 16, 2023

I find the Tenant is entitled to a return of the security deposit as follows:

Security deposit	\$700.00
Unpaid rent for October 1-4, 2023	-\$180.00
Doubling of remaining Security Deposit	\$520.00
Total	\$1040.00

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

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. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant never paid the increased rent and chose to vacate the rental unit of his own free will. I find that the Tenant suffered no loss through the actions, or neglect, of the Landlord.

For the above reasons, the tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

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

As the Landlord was partially 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 Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful in this application, the Tenant'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 grant the tenant a Monetary Order in the amount of **\$940.00** under the following terms:

Monetary Issue	Granted Amount
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a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$1040.00
Authorization for landlord to recover the filing fee for this application from the tenant under section 72 of the Act	-\$100.00
Total Amount	\$940.00

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.

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