Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

On December 16, 2022 the Tenant submitted an Application via direct request (*i.e.*, the non-participatory process) to the Residential Tenancy Branch for the return of their security deposit and pet damage deposit after the tenancy ended, and their Application filing fee. Because the extant copy of the tenancy agreement submitted by the Tenant was not signed as presented, on February 28, 2023 an adjudicator ordered this matter to be reconvened as a participatory hearing.

On January 7, 2023 the Landlord submitted an Application for:

- compensation for unpaid rent/utilities
- compensation for damage in the rental unit
- compensation for monetary loss/other money owed
- authorization to retain all/part of the security deposit
- recovery of the filing fee for this Application

The Landlord's Application was crossed to the Tenant's Application that was already in place.

On January 30, 2023, the Tenant submitted another Application, for compensation for other monetary loss, the return of the security deposit, and their Application filing fee. The Residential Tenancy Branch crossed this Application to the other files already scheduled for this hearing.

The matter proceeded to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 7, 2023. The Landlord and Tenant both attended that

scheduled hearing. I adjourned the hearing to provide each party more time to present on these issues.

Service of Notice of Dispute Resolution Proceeding and evidence

At the September 7, 2023 hearing, each side confirmed they received the other's Notice of Dispute Resolution Proceeding, and prepared evidence.

Due to the complexity of the matter, I ordered the Tenant to prepare an index of their submitted evidence. The Tenant disclosed this to the Landlord in the interim period, prior to the reconvened hearing on February 1, 2024.

In the interim period, the Landlord made a request to prepare their own index/guide. I approved this request. In the February 1st hearing, the Tenant confirmed they received this from the Landlord directly in the interim period.

In sum, I find that both parties completed service of all evidence they provided for this hearing, as required. All evidence, where necessary and relevant, receives my consideration.

Issues to be Decided

a. Is the Landlord entitled to compensation for unpaid rent/utilities?

b. Is the Landlord entitled to compensation for damage in the rental unit?

c. Is the Landlord entitled to compensation for monetary loss/other money owed?

d. Is the Tenant entitled to compensation for monetary loss/other money owed?

e. Is the Landlord entitled to retain all/part of the security/pet damage deposit?

f. Is the Tenant entitled to the return of the security/pet damage deposit?

g. Is the Landlord entitled to recover the filing fee for this Application?

h. Is the Tenant entitled to recover the filing fee for this Application?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

The Landlord and Tenant each provided a copy of the tenancy agreement. The fixed-term tenancy started on October 15, 2020, to end on a fixed-term end date of April 30, 2022. The tenancy continued on a month-to-month basis after this term. The Tenant moved out on September 30, 2022 after notifying the Landlord they wished to end the tenancy on August 30, 2022.

The rent amount as at the start of the agreement was $7,400 per month, payable on the 1st of each month.

The Tenant paid a security deposit of $3,700 and a pet damage deposit of $3,700.

The Landlord in the hearing drew attention to paragraph 19:

> Within the time period required by the Act and after the termination of this tenancy, the Landlord will deliver or mail the Security Deposit less any proper deductions or with further demand for payment to the Tenant.

as well as paragraph 28:

> The Tenant is responsible for the payment of all utilities in relation to the Property.

as well, paragraph 29 provides for one very specific point:

> The Landlord is responsible for the maintenance of the garden and backyard.

The Tenant in the hearing noted the agreement has no information about their agreement with the Landlord deducting amounts from the deposit. The Tenant noted specifically the clause in the agreement requiring a one-month notice to end the tenancy from the Tenant – as set out in paragraph 10 of the agreement with its reference to the "applicable legislation of the Province of British Columbia."

Additionally, the Tenant agreed to pay all utilities (as per paragraph 28), and the Landlord would pay for yardwork (as per paragraph 29).

The Tenant also drew attention to paragraph 6: “The Tenant has full access to the backyard, barbecue, and fire-pit.”

On August 30, 2022, the Tenant sent notice to the Landlord that they would move out from the rental unit on September 30, 2022. The Landlord responded to say they could only end the tenancy on October 31 “as agreed”. The Tenant queried in response to ask for the specific term of the agreement that required two months’ notice to end the tenancy, with that notion from the Landlord being “a little bizarre.”

The Tenant provided a forwarding address to the Landlord on September 30, 2022, and again via email on October 6. This was after they completed a walk-through inspection with the Landlord’s son on October 1.

a. Is the Landlord entitled to compensation for unpaid rent/utilities?

The Landlord provided an amended calculation table they prepared for consideration in the reconvened hearing. This sets out, in detail, amounts for utilities owed, with specific documents appearing in their record. The Landlord calculated a proper split (*i.e.*, the Tenant’s 66% share owing to the Landlord’s son’s occupancy in the lower-level unit)

These are metered utility (*i.e.* water and sewer) at the rental unit property:

- November 25, 2022: $1947.11 – Tenant confirmed and agreed to this amount in the hearing
- August 25, 2022: $4,052.09 – Tenant confirmed and agreed to this amount
- January 1, 2022: $2,513.15 – Tenant agreed to this amount (actually transferred to the Landlord’s property tax)
- June 1, 2021: $861.27 – Tenant stated there was no proof this was paid by the Landlord
- February 26, 2021: $503.44 – Tenant confirmed and agreed to this amount

The total for these amounts is $9,877.72, making the Tenant’s 66% to be $6,519.30.

b. Is the Landlord entitled to compensation for damage in the rental unit?

After receiving the notice from the Tenant about ending the tenancy on September 30, the Landlord informed the Tenant that the timeline for notification was too short. The Landlord specified the end-of-tenancy date, based on a required two-month notice, was October 31, 2022.

This relates to the Landlord's calculation of damage in that the Landlord stated to the Tenant they were imminently leaving on a trip, and would not be able to attend fully to assess damage in the rental unit by the end of September.

The Landlord's son visited to the rental unit on August 27 – 29. On August 30 the Landlord's son attended and retrieved keys from the Tenant and met with the Tenant in the rental unit one final time.

After this, the Landlord in early October notified the Tenant about damage in the rental unit. The Landlord forwarded eight photos showing areas of concern in the rental unit.

The Landlord provided a message to the Tenant dated October 4, 2022. They noted the walls as "even more ugly and need to be refinished and clean", due to the "ignorant puppy." They specified a budget of around $2,000 for this purpose, and: "If you want to get your deposit back sooner, we will calculate it at $2000."

The Landlord provided a copy of a message from the Tenant dated October 7, 2022, where the Tenant stated

> we finish this matter with $1000 off the security deposit . . . I am sure you want to move on from this matter. Please let me know when to pick up the security deposit of $6400 back.

In response to this, the Landlord pledged to examine all expenses, and then send a cheque to the Tenant. On October 13, the Landlord forwarded a cheque for $3,0003.60 after calculating those expenses and providing a breakdown to the Tenant via text message.

In the evidence the Landlord provided seven pictures that they submit shows damage in the rental unit. In this Application, the Landlord is claiming $1,000. The Landlord's position is that the Tenant agreed to this deduction from the deposit.

The Tenant noted they had an outgoing inspection meeting with the Landlord's son on October 1, 2022. The Landlord did not respond to their requests for move-in and move-out inspection reports.

In response to the Landlord's pictures, the Tenant submits that anything shown in the pictures is attributable to wear and tear over the course of the tenancy. They described the rental unit as "unpainted, filthy and unsuitable for living" when they moved in. They had to pay one-half of a move-in cleaning fee at the time.

In response to the Landlord's email message of October 4, the Tenant on October 5 stated their disagreement with the Landlord's assessment of damage in the rental unit, based on the pictures. This was in response to the Landlord's cursory assessment of $2,000 as the cost of damage in the rental unit. The Tenant's response to the pictures was that it was "regular wear and tear."

The Tenant reiterated that they objected to the Landlord's deductions from the deposits. They provided the longer text message they provided to the Landlord, noted as "read 2022-10-22" in their screenshot evidence. Relevant to the question of the Tenant agreeing to a deduction from damage, the Tenant noted:

> By law, I did not have to agree to a $1000 off the damage deposit. It was normal wear and tear. Your son did not provide a move-out report.
>
> I wanted this matter to be settled quickly and fairly to both parties.

In another message of the same date, the Tenant listed their observations about the move in, being "not painted, not very clean." Again:

> I did not agree with $1000 damage claim, given the house when we moved in was not in a good condition and nor any move in report or evidence provided that we have caused [damage].
>
> [The Tenant] did not want to cause any hard feeling and wanted to depart on good terms which I agree, but there if there are claims on your side, we have also claims . . . .
>
> Please let us know how you soon how you would like to proceed with return of our pet and damage deposit. That should be paid irrelevant to other expenses . . .

The Tenant again provided more messaging to the Landlord, stating explicitly that they did not agree to a deduction for damage.

c. ***Is the Landlord entitled to compensation for monetary loss/other money owed?***

On their calculation table, the Landlord provided two amounts for gardening fees: 2021 for $1,270 and 2022 prior to September 20 at $1,130. This totals $2,400, making the Tenant split at 66% equal to $1,584.

The Landlord provided a record of the 2022 amount for $1,130. This is in the form of an invoice for specific visits at $60 each, and a larger job of "spring trim" at $350. The Tenant's own record shows the Landlord forwarded this to them on October 12, 2022;

however the invoice as shown in the image the Landlord sent is dated November 5, 2022.

Also on October 12, 2022, the Landlord provided a text message showing a detailed calculation, including the amount of $1,270.

On October 14 the Tenant provided a lengthier email explaining the legality of deposits to the Landlord. Also on that date, via text message, the Tenant stated they did not agree with deductions from their deposit which included these gardening fees.

In the hearing, the Landlord maintained that they had a separate agreement with the Tenant, to split the gardening fees at the rental unit property. They stated the tenancy agreement provides for 100% payment by the Landlord; however, they had a separate verbal agreement in place for these costs.

In response, the Tenant pointed to the original tenancy agreement, showing that gardening fees are the Landlord's responsibility.

In the hearing, the Tenant pointed to the original agreement paragraph 29. Despite the Landlord's son moving into the rental unit, there was no discussion about the Tenant bearing any responsibility for gardening fees.

The Landlord claimed the amount of $254.88 as one-half of their expense for "pet compensation". They submitted that the Tenant agreed to this, as shown in a text message in the Landlord's evidence. The Landlord provided evidence of the cost in the form of an invoice from a veterinarian, for a "K9 spay", involving additional medication.

The Tenant included all the text messages they had with the Landlord concerning this situation. The Tenant proposed: "Let's have you pay ½ of the move out cleaning and I pay for ½ of the dog fee."

The matter did not arise again in communication. Part of the deposits that the Landlord withheld after the tenancy ended was for this issue, as calculated in the Landlord's detailed calculation they provided to the Tenant via text message on October 13.

The Landlord also claimed for three additional items:

- malicious litigation, $3,003.60 – the Landlord referred to this as "fraud compensation"
- Christmas disturbance damages, $3,003.60

- loss of time compensation, $3,000

The Landlord presented they were on time to pay a returned amount from the deposits to the Tenant. The Tenant pursuing the matter via the Residential Tenancy Branch is out-of-scope to what the Landlord proposed as a solution to the matter.

In their written submissions, the Tenant received the Landlord's statements to them, dismissive of the Tenant's stated desire to bring the matter to arbitration, as sexist in nature.

The Tenant reproduced in the record a text message from the Landlord dated January 2, 2023. The Landlord stated their own need to "file an around $20K countersuit based on all the facts . . . if we do not receive your dismissal of the lawsuit by 9:00 on January 5th, our counterclaim will be issued."

In the hearing, the Landlord presented that the Tenant's complaint about deductions from the deposit became a disturbance to the Landlord's family on Christmas. The Landlord stated their family could not be together on this holiday because of this hearing.

Regarding the "loss of time compensation", the Landlord on their monetary worksheet completed on January 5, 2023 noted "unimaginable stress and interruption."

d. Is the Tenant entitled to compensation for monetary loss/other money owed?

There were three levels at the rental unit property. The Tenant described the rental unit as being the two upper levels. No one was supposed to be occupying the lowest level of the rental unit property.

The Landlord, in response to the Tenant's description, stated they intended to rent the whole rental unit property to the Tenant, but the Tenant took only the top two levels. Around March 2021 the Landlord's son moved into the lower level. They stated the space was used as an office until June 2021.

The Tenant described the Landlord's son moving into the lower level at the rental unit property, initially to use the office space. Then the Landlord's son's family, including three dogs, moved into the lower unit to live. As stated in their dispute facts and summary document: "This arrangement and change in living conditions completely breached the agreement and contract we had with [the Landlord]."

The Tenant also described their move out from the rental unit, with the Landlord promising that their son's office would move out within two months. This prompted the Tenant to stay in the rental unit; however, the Landlord then stated they did not know when/if their son would move out from the lower level.

In their written submission, as well as in the hearing, the Tenant reiterated that living conditions were very difficult, including excessive noise from extra people (including the Landlord's son's niece) and the dogs, of which there were eventually five. This included partying and karaoke and queries about the yard space and parking, according to the Tenant. The Tenant provided messages showing their queries to the Landlord's son from throughout 2021.

The Landlord in response specified that the lowest level at the rental unit property was not in the tenancy agreement: neither included as part of the rental unit, nor specifically excluded from having any other person living in it. The Landlord stated that their only comment to the Tenant about the lowest level was that the lowest level would be used occasionally by the Landlord's visiting family members. They reiterated in the hearing that there was no clause specifically stating that the lowest level would be completely vacant (*i.e.*, not lived in by anyone).

The Landlord in the hearing also pointed to the Tenant's request to continue the tenancy on a month-to-month basis when the fixed-term ended in April 2022. As stated: "If the tenancy conditions were so bad, why ask to stay on a month-to-month basis?"

The Landlord also submitted that the Tenant did not mention the hardship they faced in the rental unit on their first Application to the Residential Tenancy Branch, pointing this out an as inconsistency that detracts from the truth of the Tenant's statements. The Landlord's son also sought treatment for anxiety as a result of this tenancy.

In the hearing the Tenant stated that from the beginning, even before signing the tenancy agreement, their concern was that someone was living in the lowest level, that person being the Landlord's son. They referred to the text messages in their evidence (starting September 6, 2020), and provided a description of the message in their summary/evidence list document thus:

> Text messages clearly demonstrate that [the Landlord] initially moved an office into the lower unit, which was originally intended to remain vacant. Later, [the Landlord's son] along with [the Landlord's son's] wife and three dogs, moved into the suite, thus breaching their initial promise and agreement to keep the lower unit unoccupied.

As shown in the Tenant's evidence, the text messages from September 7, 2020 show the Landlord's son responding to the Tenant to say the lowest level would not be rented out and "it'll be kept within the family." And: ". . . like I said the downstairs will only be accessible by my parents [*i.e.*, the Landlord]."

On February 16, 2021, the Landlord's son notified the Tenant that they would be working in the lower level "4-5 days a week, only 3-4 of us at a time". In April the Tenant texted the Landlord's son about gates being left open.

The Tenant reiterated their concern to the Landlord's son on May 7, 2021, stating "It has been more than 2 months than what initially you told me". The Landlord's son replied to state: ". . . we had to move back to the suite downstairs for the time being before we find a new place. . .I understand that it's different from when you guys moved in last year because our circumstances have changed." In a later email to the Landlord, on October 14, 2022, the Tenant stated it was in May 2021 that the Landlord's son moved in with their family.

In early July the Tenant and Landlord's son communicated about some filming production on the property. On July 9, the Tenant stated their concerns in terms of the traffic and backyard space and privacy:

> It is getting more difficult than we were expecting, with filming crew and setup, traffics, backyard that only us were supposed to have access to, and parking a or even blocking access to lower parking sometimes. For sure everytime addressing this is also not helpful.
>
> People walking around the house and no privacy at all, I can not even walk in my comfortable clothes inside the house. At midnight sometimes with barking or noises . . .

By July 11, the Tenant re-stated their concern to the Landlord's son, who responded in a longer message to say they have guests only one or two times per week, and were not using the unit approximately 80% of the time. The Tenant reiterated:

> When we moved here we were told that the suite would be used sparingly by your parents to enjoy the view. No one mentioned that you were going to use the lower level to conduct business.

Also in July and August, the Tenant messaged about dogs, and tried to set a designated time for the dogs to be inside.

In text responses, the Landlord re-stated their difficult position that they had nowhere else to stay.

The Tenant also presented messages that show the Landlord was inquiring with their son about a move-out from the lower level. By November 21, the Landlord could not provide an answer to the Tenant about the status of the lower level.

For compensation, the Tenant set out 10% rent returned to them for the period from February 2021 to September 2022. This amount, as calculated in a spreadsheet they provided in evidence, is $23,680.

The Tenant also claims for the move-out expense they paid at the end of the tenancy. The Tenant referred to this as a “move-out fee”, and provided the invoice they paid for moving that was $5,000. The Tenant capped this part of the claim at $3,500.

In their written submission, the Tenant noted they asked the Landlord to end the tenancy, return the deposits, and pay for their move. The Landlord did not agree to this.

In their evidence the Tenant also included their emailed notice to the Landlord about ending the tenancy, sent on August 30. They noted their need for more space overall. In a separate message the following day, they cited “difficult living conditions”.

The Tenant also listed utilities amounts for Hydro ($1,597) and Gas ($1,764), totaling $3,351.09. (The Tenant’s amount owed itself is calculated at $6,702.18.) These are each .33 (or 30%) of the invoiced amounts they paid, to be reimbursed (as they submit) by the Landlord for the reason of the lower-level unit accommodating the Landlord’s son’s family. For each, the Tenant provided the invoiced amount (bi-monthly, in the case of Hydro and monthly in the case of Gas) from January/February 2021 through to October/September 2022.

The Tenant provided all invoices that appeared in their spreadsheet calculations.

The Tenant’s reason for claiming utilities is set out in their written submission. Again, this refers to the original arrangement when they signed the tenancy agreement: “no one was supposed to live in the lower unit, so we paid for our utilities at the property.” They stated the Landlord’s son “promised to cover their portion of the utilities and pay us back for utilities we paid for them.”

The Tenant provided proof of the Landlord’s agreement on utilities in the form of text messages. This shows the Landlord’s request, in approximately February 2022, to “divide it upstairs and downstairs according to the area.” Toward the end of the tenancy on September 28, the Landlord was querying what totals were in place. The Tenant’s

messages also show an early-tenancy message dated November 20, 2021 with the Landlord proposing 1/3 of the utility bills.

The Landlord provided a separate calculation sheet prior to the reconvened hearing session on February 1, 2024. In this table the Landlord calculated 34% (from $6,702.18) to be $2,278.74. The Landlord agreed to this amount as owing from them regarding utility amounts the Tenant paid.

e. Is the Landlord entitled to retain all/part of the security deposit?

f. Is the Tenant entitled to the return of the security/pet damage deposit?

In the Tenant's Application of December 16, 2022, they requested $14,800, which is a full doubling of the combined security deposit ($3,700) and pet damage deposit ($3,700). They noted that they served their forwarding address to the Landlord, in person, on September 30, 2022. As of the date of the December 16 Application, the Landlord had not made a claim against the deposits.

They provided a copy of the form designed specifically for this purpose, signed by the Tenant on October 18, 2022, providing a forwarding address, and an email address for service. They noted separately they provided the form to the Landlord's son directly at the rental unit when moving out on September 30.

On October 4, 2022, the Landlord stated their need for a "calculation" with consideration to some damage in the rental unit, providing photos. They provided "the budget is around $2,000, and I won't know until [repair] is done." After this, the Landlord pledged to return the remainder of the deposit to the Tenant. The Tenant in response described their final meeting in the rental unit with the Landlord's son, with no mention of damage in the rental unit.

The Tenant again provided their forwarding address to the Landlord on October 5, 2022 via email. In this message the Tenant stated directly to the Landlord that they provided their forwarding address in person, using the prescribed form, to the Landlord's son on September 30.

The Landlord had returned an amount of $3,003.60 to the Tenant by cheque dated October 13, 2022 (as shown in the Tenant's evidence) and delivered the same to the Tenant on that date.

On October 14, the Tenant, in a lengthier email, noted directly to the Landlord that they did not have any move-in or move-out inspection records. According to the Tenant, the

only record they had at that point was the Landlord's photos sent on October 4, showing slight damage in the rental unit. The Tenant agreed to a simple $1,000 deduction to have the matter settled.

Re-listing the dates and a timeline in another separate document in the evidence, they described the Landlord ignoring messages about the deposits. The Landlord on October 13, 2022 forwarded calculations to the Tenant to justify the total deducted amount of $4,300, for the Tenant to pay for the Landlord's own pet's surgery (for $254.88, which the Landlord states the Tenant agreed to), gardening amounts (disclosed in an invoice in the amount of $1,130), and claimed damage to the rental unit.

In the Tenant's first Application, the Tenant provided reasons why they requested a doubling of the total deposits' amount: this involves the stress and anxiety they faced while living in the rental unit with the Landlord's son living in the lower-level unit. The Tenant did not specifically cite the timelines or obligations of the Landlord with respect to deposits as set out in the *Act*, though they messaged that to the Landlord previously.

In the Tenant's second Application of January 30, 2023, they listed the specific amount of $4,400. They submit the Landlord refused to return the deposits in full after the end of the tenancy, and did not apply for dispute resolution within the timeframe as set out in the *Act*. The Landlord deducted an amount from the deposits unilaterally without the Tenant's consent – the specific amount claimed by the Tenant, as withheld by the Landlord, is $4,400.

In a written submission specific to this piece, the Tenant provided all messages to/from the Landlord on this matter. They re-stated that the Landlord, on August 31, stated the current month-to-month agreement (as it was at that stage of the tenancy) required a two-month notice to end the tenancy from the Tenant, making the correct end-of-tenancy date, from the Landlord's perspective, to be October 31, 2022.

In sum, by mid-October the Tenant cited the Landlord's lack of a correct amount returned to them, the Landlord's own deduction without proof thereof.

In the hearing, the Landlord described their belief that the Tenant deliberately delayed informing the Landlord about ending the tenancy. They visited to the rental unit on August 26, 27, and 28; however, there was no mention to the Landlord about ending the tenancy until August 30, at which point the Landlord had already left on a trip. Being away on a trip meant the Landlord could not get bills and move-out records.

The Landlord provided a record that they submit shows the Tenant agreed to pay $1,000. This is a text message dated October 7, 2022, wherein the Tenant stated: “we finish this matter with $1000 off the security deposit”, and requested the return of $6,400.

The Landlord reiterated that when the Tenant asked for proof of the Landlord’s claims against the deposit, it was on the final day of the tenancy and the Landlord was not prepared with that information at the time. This was because of the timing of the Tenant’s notice to them about ending the tenancy.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss, the applicant as the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- the value of the damage or loss; and
- steps taken, if any, to mitigate the damage or loss.

a. Is the Landlord entitled to compensation for unpaid rent/utilities?

Regarding the Landlord’s claim on the water and sewer utility they paid over the course of this tenancy, I accept the invoices they submitted are accurate and reflect a true picture of the water/sewer use at the rental unit property. The Landlord conceded the Tenant should pay 66% of all amounts; the Tenant agreed to the evidence provided by the Landlord in the hearing.

The Tenant made one query on the bill amount for June 1, 2021, stating the Landlord did not provide proof of this amount, meaning the Tenant already paid it. The Tenant

did not provide proof of their payment of this amount. I therefore grant there are no exceptions to the amounts or calculations provided by the Landlord.

Therefore, I grant the amount of $6,519.30 to the Landlord for water and sewer amounts they paid. As per the tenancy agreement, and an amicable agreement on the split amount, I order the Tenant to pay this amount to the Landlord.

b. Is the Landlord entitled to compensation for damage in the rental unit?

The *Act* s. 37 provides that, when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As per s. 38(4), a landlord may retain an amount from the deposits if a tenant agrees in writing that a landlord may retain an amount.

The *Act* s. 24(2) sets out that a landlord's right to claim against deposits is extinguished if they do not provide opportunities for a move-in inspection, or if they do not document an inspection meeting with a copy thereof to a tenant.

Also, at the end of a tenancy, s. 36 sets the same restriction if there is no move-out inspection meeting, and no documentation thereof.

The *Act* s. 38(5) states that a landlord's right to retain all/part of a deposit does not apply if the liability is in relation to damage, and the landlord's right to claim for damage deposit against a deposit was extinguished under either s. 24(2) or s. 36(2).

I find the Tenant's message to the Landlord on October 7, 2022 was an offer to settle all matters and issues the Landlord was raising at that time, post-tenancy. This was an all-inclusive offer and not specific to damage in the rental unit. I find this was a proposal by the Tenant for a one-time amount deducted from the deposit. The Landlord did not accept that offer; therefore, I find it cancelled.

I find, definitively, it does not stand as the Tenant's agreement to a deduction from the deposits for damage in the rental unit. In any event, the Landlord did not have the Tenant's express written agreement on this amount for damage. The greater weight of messaging from the Tenant shows their disagreement with the Landlord's assessment of damage as shown in seven photos that are in the evidence.

I find the Landlord's right to claim against the deposits was extinguished because there was no documented move-in or move-out inspection. This is required as per the *Act*

and the purpose is to have matters of damage in the rental unit decided, if contested, based on evidence.

Further: as per s. 38(5), the Landlord would for this same reason not have the right to retain any amount even if they did have the Tenant's agreement, which I find they did not.

For these reasons, I find the Landlord's right to claim against the deposits is extinguished.

Applying the measures listed at the outset of this Analysis section, I find there is insufficient proof that damage or loss exists beyond reasonable wear and tear. The burden of proof is on the Landlord, and they did not provide sufficient evidence for this claim. Importantly, there is no baseline start-of-tenancy condition recorded to establish the condition of the rental unit at the start of the tenancy.

The Landlord provided no evidence to establish the value of anything they deem to be damage in the rental unit.

For these additional reasons, I dismiss the Landlord's claim for compensation associated with damage in the rental unit, without leave to reapply.

c. Is the Landlord entitled to compensation for monetary loss/other money owed?

I find the Landlord did not provide sufficient evidence, either documented or in the form of their testimony, to show that there was a separate agreement in place regarding gardening at the rental unit property.

The tenancy agreement has it in place that the Landlord is responsible for gardening maintenance. There is no evidence counter to this. I dismiss the Landlord's claim for recovery of gardening fees for this reason.

Regarding specific details, I find it odd that the invoice for $1,130 the Landlord presented to the Tenant on October 12 bears the date of November 5. Also, the Landlord provided no document to verify the billed amount of $1,270.

Finally on this point, I find the Landlord did not originally seek this amount in their January 7, 2023 Application. They only added this in their calculation table for the reconvened hearing. This leads me to question the legitimacy of this claim, as well as the statement that there was a subsequent verbal agreement in place with the Tenant.

Regarding the matter of the Landlord's pet veterinarian fee, I find the Tenant proposed to pay half of that cost on October 13. This is in the context of the Landlord and Tenant negotiating residual costs at the end of the tenancy, and that discussion did not end in a conclusion on any of the amounts in question.

I find this issue is nothing concerning the tenancy. A "security deposit" as set out in s. 1 of the *Act* is for "any liability or obligation of the tenant respecting the residential property". A "pet damage deposit" is for "damage to residential property caused by a pet". Both deposits concern *property*, and "residential property" means the building, parcel of land, the rental unit, or any other structure.

As well, the *Act* s. 2 states that it concerns only tenancy agreements, rental units, and other residential property. The matter of the parties' pets, their interaction, and some expenses related to that, is outside the reach of the *Act* and/or the tenancy agreement.

I grant no compensation for this matter that strictly speaking does not concern the tenancy. I dismiss this piece of the Landlord's claim for this reason.

Regarding the Landlord's other three pieces (*i.e.*, malicious litigation, Christmas disturbance damages, loss of time compensation), I find the Landlord is seeking some form of aggravated damages. These are less tangible impacts to the Landlord; I am equating these to mental damage to the Landlord.

On these pieces, I find there is no breach by the Tenant, such that would constitute some violation of the *Act*. The Tenant has every right under the *Act* to have the matter resolved via the Residential Tenancy Branch.

I find the Landlord did not quantify each of these pieces with evidence. These amounts are purely arbitrary. One piece that *is* quantifiable – the Landlord's time – was not calculated. Other than this, I find the Landlord did not provide fulsome details on why they feel their emotions regarding the situation are compensable outcomes.

I find this is a purely punitive measure by the Landlord, in line with one of the final messages they sent to the Tenant in early January 2023.

For the lack of detail on these pieces overall, I dismiss this claim from the Landlord without leave to reapply.

d. Is the Tenant entitled to compensation for monetary loss/other money owed?

The *Act* s. 28 sets out a tenant's right to quiet enjoyment. This includes reasonable privacy, freedom from unreasonable disturbance, and exclusive possession subject to a landlord's right to enter. As phrased in the *Residential Tenancy Policy Guideline 6: Entitlement to Quiet Enjoyment*, a breach means "substantial interference with the ordinary and lawful enjoyment of the premises" for a tenant. There is a distinction between temporary discomfort or inconvenience, and ongoing interference or unreasonable disturbances.

In terms of compensation to a party in an instance where the other has not complied with the *Act* or the tenancy agreement, the *Act* s. 65 grants compensation in the form of a reduction in rent – that is s. 65(f), a reduction in rent "that is equivalent to a reduction in the value of a tenancy agreement."

In this case, I find the Landlord's son moving into the lower-level unit, in a staggered process -- first as office space, then as their chief living arrangement with family and dogs -- was an ongoing, substantial interference with the Tenant's right to quiet enjoyment. I find that was not the arrangement that was in place when the Tenant signed the tenancy agreement and moved into the rental unit. This was a reduction in the value of the tenancy agreement. Specifically, I find this was interference and disturbance from the Landlord's son's use of the yard and the driveway (which required what I find is a high frequency of messaging and clarification), the presence of the Landlord's son's pets (which caused similar ongoing disruption in terms of noise and other concerns about the gate entry, requiring continued messaging and clarification), frequent visitors and guests (in line with the use of the office space), and the Tenant needing to ask for quiet in specific instances (*e.g.*, karaoke).

More specifically, I find the Tenant credible on the point that office use entailed a more-than-comfortable number of people attending to the lower-level unit used as an office, during a time of reduced social interaction by public health order. In this piece, the Tenant had to accommodate extra parking on an ongoing basis, visitors to the immediate area of the rental unit, requests from the Landlord's son about use of the yard/driveway for filming, and the timing thereof. I find this would normally be restricted to regular working hours, from Monday to Friday. On a scale of disturbance or interruption, I would place this on the lower end of the spectrum due to workday-timed events, for a five-month timeframe owing to the evidence showing the Landlord's son notified the Tenant about the change in office use in the summer. However, this was

still a significant interference with the Tenant's quiet enjoyment – the Tenant did not sign an agreement to live in a place above a functioning place of business.

I find this began in March 2021 when the Landlord's son was using the lower-level office space. The ongoing nature of disturbance and interference increased when the Landlord's son and their family moved into the lower level. From the evidence of the Tenant's October 14, 2022 comprehensive summary of the tenancy in whole to the Landlord, I find the Landlord's son with their family moved into the lower-level unit in May 2021. I find even moderate interruptions from March 2021 onwards presented difficulties for the Tenant who was accustomed to quiet time in their own space up to that time in the tenancy.

There was no evidence to say the Landlord's son had ever moved out from the lower-level unit, and based on the Tenant's claim for a full two years' reduction in rent, I find as fact that the Landlord's son did not move out from the lower level unit before the tenancy ended on September 30, 2022.

I find the Landlord's son living with their family in the lower level was on the higher end of the spectrum on a scale of disturbance and interruption. For a period of time this was combined with the use of the space as an office. As set out above, I find this involved even more frequent communication from the Tenant to the Landlord to clarify what was going on, as well as to state their position on the impact of the Landlord's son living in the rental unit. I find the need for such communication alone was impactful to the Tenant's quiet enjoyment in the rental unit.

The Landlord stated plainly that the lower-level unit was not in the tenancy agreement. I find this sums up the Landlord's position that they own the property, and thus can use that extra piece of the property in any way they see fit. I find that is true; however, this position is not sustainable where the use of that lower level affects the quiet enjoyment of the Tenant, with whom the Landlord was in a tenancy agreement.

In sum, I find the Landlord's son moving into the lower level, alternately and concurrently using that as an office space, was an ongoing, substantial interference with the Tenant's right to quiet enjoyment. I find it clear that the situation presented difficulties for the Tenant who was accustomed to having their own space prior to March 2021.

This was a sustained period over the course of the tenancy on a near-daily, or daily basis; however, I find the Tenant did not bring the matter forward in a dispute resolution

process prior to the tenancy ending. This does not undermine the occurrence thereof; however, I find the Tenant did not mitigate appropriately in trying to alleviate the ongoing problem. There is no record of the Tenant proposing a reduction in rent because of this situation at the time. I find compensation for this breach is justified in the circumstances; however, it is a limited amount for these reasons. I also find it was entirely possible the Landlord would use the lower-level unit for their own purpose of some sort; however, what the Tenant was informed about this was quite different (*i.e.*, the Landlord themself using the lower-level unit occasionally) as opposed to its use as office space, and then used as living accommodation for the Landlord's son's family.

Regarding the impact on the Tenant's quiet enjoyment during the tenancy, I grant the following compensation to the Tenant:

- a 5% reduction in rent paid, for the period March 2021 to July 2021, for the office space impact: $1,850

- an additional 8% reduction in rent paid, for the period May 2021 to September 2022, for the lower-level living arrangements impacting the Tenant: $10,064

In total, this amount of compensation to the Tenant, in the form of retroactive rent reduction where the value of the tenancy was lessened, is $11,914. I provided the true calculation and verified the amounts of 5% rent and 10% for each of the amounts paid. I note the Tenant in their spreadsheet applied a 0.16 factor to the total amount of rent they paid – this does not represent 10% of rent paid as the Tenant submits.

I grant no compensation to the Tenant for moving costs. I find it was the Tenant's choice to end the tenancy. I find the end of this tenancy was not hastened by an eviction or other dire circumstances. I conclude there was no urgency to the Tenant's move out, making their choice of using movers at the cost they paid entirely their own choice. A move-out was not *imposed* by the Landlord. I dismiss this piece of the Tenant's claim, without leave to reapply.

As indicated on the Landlord's calculation table, I find the Landlord is agreeing to 34% of the total utilities that the Tenant paid. On the Landlord's worksheet, they put this amount at $2,278.74, which is actually 34% of the *Tenant's* calculated portion (*i.e.*, $6,702.18). I find this is in error. The full amount of utilities the Tenant paid, as shown in the provided invoices, is $10,053.27. Thus follows 34% of this amount, equal to $3,418.11.

I find the amount of $3,418.11 is the correct amount, based on the Landlord's concession of 34% of invoices that the Tenant paid. I grant the Tenant $3,418.11 in compensation for utilities owed to them from the Landlord.

In sum, under this category of compensation to the Tenant, I grant $15,332.11.

e. Is the Landlord entitled to retain all/part of the security/pet damage deposit?

The *Act* s. 38(1) sets out that a landlord must either (a) repay any security or pet damage deposit to a tenant, or (b) make an application for dispute resolution claiming against the deposit. This must occur within fifteen days of the alter of either the tenancy end date, or the date a landlord receives a tenant's forwarding address in writing. This is the law on security and pet damage deposits when a tenancy ends. This is strictly applied in all cases unless a landlord has a tenant's written consent to keep all/part of the deposits, or some order from the Residential Tenancy Branch.

In a situation where a landlord does not comply with s. 38(1), the *Act* s. 38(6) provides that a landlord may not make a claim against either deposit, and must pay to a tenant double the amount of the deposits.

Also, concerning a landlord's right to claim against the deposits: s. 24(2) provides that a landlord's right to claim against deposits is extinguished if they do not provide opportunities for a move-in inspection, does not participate, and does not document the inspection and provide a copy to a tenant.

Similarly, concerning the end of a tenancy, as per s. 36 a landlord's right to claim against deposits is extinguished for the same reasons: no move-out inspection meeting, and no documentation thereof.

I find as fact that the Landlord returned a part of the security deposit to the Tenant on October 13, 2022 by cheque. The Landlord's son delivered this in person. That amount was $3,003.60. I find there was no return of the pet damage deposit to the Tenant. In the Landlord's written calculation table on page 2, they factored in the full deposits combined amount of $7,400.

I find the Landlord's right to claim against the deposits – only for damage in the rental unit – is extinguished, throughout application of s. 24(2) and s. 36(2). There were no documented inspections in the rental unit with the Tenant present, either at the start or

at the end of the tenancy. Photos the Landlord sent to the Tenant later do not qualify as the required condition inspection report.

Moreover, while the Landlord cites the Tenant's short notice to them concerning the end of the tenancy, I find there was no breach of the *Act* by the Tenant in this regard. As per s. 45(1), the Tenant notified the Landlord over one month prior to the end-of-tenancy date, and the Tenant specified the end-date to be the day before rent was payable.

I find as fact that the Landlord retained a part of the security deposit, and all of the pet damage deposit. This is the amount of $4,400 in total, which must be returned to the Tenant. I find the Tenant did not agree to any deductions, and the Landlord deducted the amounts in violation of the *Act*, with no application filed within 15 days of receiving the Tenant's forwarding address on either of the dates of September 30, or alternately October 4, 2022. Should the Tenant's signature of October 18, as dated, be the case, the Landlord still did not return the deposit of claim against it within the statute-drive timeline.

f. Is the Tenant entitled to the return of the security/pet damage deposit?

I find as fact that the Tenant provided their forwarding address to the Landlord on September 30, 2022. This was also the final day of the tenancy. The document is time-stamped with the Tenant's signature for October 18. That is the end-date I use to count 15 days.

The Landlord did not dispute the fact that the Tenant provided their forwarding address in person on September 30, 2022. I also note the Tenant provided the forwarding address again to the Landlord on October 4, 2022 via email.

The Landlord filed their Application at the Residential Tenancy Branch on January 7, 2023. Whether this was in response to the Tenant's initial December 16 Application is irrelevant. I find the Landlord's right to claim against the deposits was extinguished as set out above. The Landlord's Application against the deposit well after the 15-day time period is a breach of the *Act* s. 38(1). The Landlord's one-sided deduction from the deposits is also a breach of the *Act* s. 38(1)

I find that, in this scenario, s. 38(6) applies, and the Landlord must compensate the Tenant for double the amounts of each deposit. This amount is $14,800. I find the Tenant notified the Landlord about the *Act* timeline thereof in messaging throughout October.

I grant the Tenant this compensation based on their December 16, 2022 Application; therefore, I dismiss the overlapping part concerning deposit return from the Tenant's second Application of January 30, 2023, without leave to reapply.

Above, I granted the Landlord compensation for utilities amounts owed to them in the amount of $6,519.30. The *Act* s. 72(2)(b) provides that any amount for payment from a tenant to a landlord may be deducted from any security deposit or pet damage deposit due to the Tenant. In line with this, I authorize the Landlord to withhold the amount of $6,419.30 from the doubling of the security/pet damage deposit I granted to the Tenant. Accounting for this, the amount of the return of the deposits to the Tenant is $8,280.70.

g. Is the Landlord entitled to recover the filing fee for this Application?

I grant the Landlord compensation for the Application filing fee because they were successful on a piece of their Application. This amount is $100; therefore, the amount of the deposits returned to the Tenant is $8,180.70.

h. Is the Tenant entitled to recover the filing fee for this Application?

I find the Tenant was successful on their December 16, 2022 Application for the return of their deposits. I grant compensation for that Application filing fee; this amount is $100.

I find the Tenant was successful on their January 30, 2023 Application for monetary loss/other money compensation. I grant compensation for that Application filing fee; this amount is $100.

Conclusion

I grant the Tenant a Monetary Order in the amount of **$23,712.81** under the following terms:

Monetary Issue	**Granted Amount**
compensation to the Tenant for monetary loss/other money owed	$15,332.11
compensation to the Tenant for deposits return	$14,800.00
compensation to the Landlord for utilities	-$6.519.30
Landlord's recovery of the Application filing fee	-$100.00
Tenant's recovery of the Application filing fee	$100.00
Tenant's recovery of the Application filing fee	$100.00
Total Amount to Tenant	**$23,712.81**

I provide the Tenant with this Monetary Order in the above terms and the Tenant must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 1, 2024

Residential Tenancy Branch