

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 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

It also dealt with the Tenant's Application 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord and the Tenant attended the hearing. The Tenant was represented by an advocate.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both the Landlord and the Tenant confirmed that they received the other party's Proceeding Package in accordance with the Act.

Service of Evidence

Both the Landlord and the Tenant confirmed that service of evidence was done in accordance with the Act.

Issues to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to compensation for money owed or compensation for damage or loss?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to the return of the security deposit? Should the security deposit be doubled?

Is either party entitled to return of the filing fee?

Background and Evidence

The tenancy began on December 1, 2022. Monthly rent was \$1,785.00. The tenancy ended on September 30, 2022. The Tenant paid a deposit of \$892.50. The deposit is held by the Landlord.

The Landlord's agent provided a copy of a move in and move out condition inspection report. He said that the move in condition inspection report was likely completed after the Tenant moved in, because the Landlord's representative named on the report (RR) only started working for him after the Tenant moved in. The "move in" portion of the report is not signed by either the Landlord's agent or the Tenant – their names are typed in. The Landlord's agent said that his representative conducted the move out condition inspection after the Tenant vacated the rental unit, in her absence. The Tenant's agent said that she did not participate in a move in or move out condition inspection.

The Landlord's agent said that the Tenant vacated the rental unit at 10pm on September 30, 2023, rather than at 1pm, which is required by the tenancy agreement. The tenancy agreement provides that overholding is to be charged at \$100.00 an hour. The Landlord says that he is entitled to \$900.00 from the Tenant. The Tenant's agent said that this clause is unconscionable because of the amount of the charge and the fact that it is on an hourly basis. The Tenant's agent also said that no overholding occurred because the Tenant did not stay on the premises beyond September 30, 2023. She said that there were extenuating circumstances preventing her from moving out on time – her movers repeatedly delayed their arrival.

The Landlord's agent said that the rental unit was not left in a clean condition and extensive cleaning was required. He said that the cost for cleaning is \$80.00 and was done "in house". The Tenant's agent said that there was no evidence that the rental unit was unclean. The move out condition inspection report, prepared by the Landlord's agent RR, does not indicate that the rental unit was unclean.

The Landlord's agent said that 4 blinds had to be replaced at a cost of \$99.09. The monetary worksheet indicates the blinds were replaced at Home Depot. No receipt was submitted. The move out condition inspection report indicates that the blinds were

damaged at move out and in good condition at move in. The Landlord's agent said that he was not sure what the exact damage to the blinds was. The Tenant's agent said that the blinds were not in good shape at move in. She also disputed the legitimacy of the move in report because it was not completed in the presence of the Tenant or when the Tenant actually moved in.

The Landlord's claimed \$324.70 in electricity charges from the City of New Westminster. The Landlord's agent said that the Tenant did not pay her bill and that charges were passed on to the Landlord by the City. He said the entire amount was paid by the Landlord. He did not provide any written evidence showing payment of the entire amount of the outstanding electricity bill or details regarding exactly when the outstanding amount was paid by the Landlord. An email from the City of New Westminster dated October 5, 2023 says that "Final charges owing up to Sept 30 are \$324.70. Please note that the Final Bill was mailed to the tenant's new mailing address only on October 5." The Tenant said that the entire bill was paid by a third party. The Tenant submitted a record from her hydro account showing that \$200.00 was paid on October 10, 2023.

The Tenant provided her forwarding address to the Landlord on October 3, 2023.

Analysis

Is the Landlord entitled to compensation for damage to the rental unit?

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

I am not satisfied that the Tenant damaged the blinds. No pictures of damaged blinds were submitted in evidence, nor did the Landlord provide any detail regarding the damage to the blinds. I accept the Tenant's evidence that the blinds were not in good condition at move in. I completely disregard the move-in condition inspection report, which was clearly prepared after the move in date in the absence of the Tenant and was not signed by any of the parties. It is not a reliable document. This claim is dismissed without leave to reapply.

Is the Landlord entitled to compensation for money owed or compensation for damage or loss?

To be awarded compensation for a breach of the Act regulation or tenancy agreement, 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

Electricity

Under the tenancy agreement, the Tenant is required to pay utilities other than water. I am satisfied that \$324.70 in electricity charges were passed on to the Landlord by the City of New Westminster. However, based on the evidence submitted, I find that the Tenant (through a third party) paid \$200.00 to BC Hydro contemporaneously, on or around October 10, 2023. This is consistent with the Landlord's email evidence from the City, which shows that the bill was only sent to the Tenant by the City on October 5, 2023. The Landlord's agent said that the Landlord fully paid the outstanding electricity bill, but submitted no proof of payment or details as to when payment was made. The Landlord's agent did not indicate or suggest that he had any personal involvement in paying the electricity charge – his knowledge of this issue was lacking in specifics. In the circumstances, I am not satisfied that the Landlord has incurred any actual costs in relation to this invoice and therefore do not award any compensation to the Landlord.

Cleaning

The Landlord submitted no evidence showing that the rental unit was unclean. The move out condition inspection report does not indicate that the rental unit was unclean. I find that this claim is unproven.

Overholding

I find that the clause providing that an overholding tenant pay compensation at a rate of \$100 per hour to be unconscionable. Such a clause would provide for overholding rent, on a monthly basis, in the amount of \$74,400.00, which is approximately 41 times the monthly rent. Such a clause is clearly punitive, oppressive, and grossly unfair. I decline to award the Landlord any compensation for overholding because the clause in the tenancy agreement is unenforceable.

Is the Landlord entitled to retain the security deposit?

The Landlord is not entitled to retain the security deposit because no amounts are owed by the Tenant.

Is the Tenant entitled to the return of the security deposit? Should the security deposit be doubled?

The Tenant provided her forwarding address on October 3, 2023. This was not disputed by the Landlord. The Landlord filed for dispute resolution on October 10, 2023. The Tenant says that the security deposit should be doubled because the Landlord's right to retain the security deposit was extinguished because of section 38(5) of the Act:

38 (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply **if the liability of the tenant is in relation to damage** and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

[my emphasis]

I agree that the Landlord's right to retain all or part of the security deposit is extinguished as it pertains to damage to the rental unit. I find that the requirements of sections 23 of the Act were not complied with by the Landlord, because no move in condition inspection report was prepared with the Tenant, nor was one provided to the Tenant. This extinguished the Landlord's right to claim against the deposit for damage because of section 24 of the Act. However, this does not mean that the Landlord cannot make other claims against the Tenant, which was done within 15 days of receiving the forwarding address. This is explained in Policy Guideline 17:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- a. to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- b. to file a claim against the deposit for any monies owing for other than damage to the rental unit;**
- c. to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- d. to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

While the Landlord was unsuccessful, I do not find their claims to be frivolous or an abuse of process.

The Tenant is not entitled to the doubling of their security deposit. The Tenant is, however, entitled to the return of the full amount of the security deposit with interest.

Is either party entitled to return of the filing fee?

The Landlord was largely unsuccessful and is not entitled to return of the filing fee. The Tenant was successful and is entitled to return of the filing fee.

Conclusion

The Landlord's application is dismissed without leave to reapply.

The Tenant's application is granted. I grant the Tenant a Monetary Order in the amount of \$1,014.29 under the following terms:

Monetary Issue	Granted Amount
Security deposit with interest	\$914.29
Plus filing fee	\$100.00
Total Amount	\$1,014.29

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: March 5, 2024

Residential Tenancy Branch