

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 or utilities 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

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

- the return of the Tenant's security deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord GL and Interpreter CZ attended the hearing for the Landlord.

Tenant ME also attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged receipt of the Notice of Dispute Resolution Proceeding.

Issues to be Decided

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

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 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 Tenants' security deposit in partial satisfaction of the monetary award requested? Alternatively, are the Tenants entitled to the return of their security deposit?

Is the either party entitled to recover the filing fee for their application from the other?

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 December 1st, 2021, with a monthly rent of \$1,700.00, due on first day of the month, with a security deposit in the amount of \$1,700.00.

The Tenant ME testified that the tenancy ended on February 28th, 2023, and that the following day, March 1st, he returned the keys and the Landlord inspected the rental unit, but did not complete a condition inspection report.

ME testified that he posted his forwarding address on the Landlord's door on October 26th, 2023, using the RTB form; he then waited until November 20th before filing his application.

The Landlord GL testified that the Tenants had purposefully put water on the floor of the rental unit to cause mould. She testified that contractors who inspected the unit informed her that the damage to the rental unit was not caused by a leak. She produced in evidence an estimate for repair of the damage caused by the mould, which cited the amount of \$10,000.00.

GL also testified that the Tenants left dozens of holes in the walls, including several quite large holes. She provided photographs of the holes.

GL testified that the mould damage and wall damage has not yet been repaired.

GL testified that due to the mould and wall damage, she has not rented the unit since the Tenants vacated on February 28th, 2023. She testified that she has not undertaken the repairs as yet because she wants money from the Tenants to complete the repairs, and she wished to maintain evidence for this hearing.

GL testified that the Tenant had not paid the utilities under the tenancy agreement; she placed five utility bills into evidence, and testified that the Tenant had paid his share of one of the bills, but none of the others.

GL testified that the Tenant had harassed her, specifically mentioning: banging on her door at 4:00 a.m.; banging on her door at 9:00 p.m.; and repeatedly recording video of her through the windows and door of her house. GL also testified that the Tenant's family at one point struck her dog.

ME testified that he did not cause the water or mould damage. He conceded that he owed his one-third share of the same utility bills. He produced a calculation of the amounts, pro-rating two bills which covered time following the end of the tenancy.

ME testified that no final condition inspection was conducted; and that he provided his forwarding address by posting it on the Landlord's door on October 26th, 2023.

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 utilities?

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.

Based on the evidence before me, I find that the Landlord has established a claim for utility charges. The parties agreed that the Tenant had not paid his portion of four utility bills. I agree with the Tenant that it is appropriate to pro-rate bills which cover a time period extending beyond the end of the tenancy on February 28th, 2023. The tenancy agreement provides that the Tenant would be responsible for one-third of the utilities.

<i>Vendor</i>	<i>Period</i>	<i>Amount</i>	<i>Days in Tenancy</i>	<i>Tenant's Share</i>
BC Hydro	Dec. 20 – Feb. 16	\$214.05	All	\$71.35
Fortis	Jan. 20 – Feb. 15	\$440.26	All	\$146.75
BC Hydro	Feb. 17 – Apr. 19	\$120.75	12 of 62	\$7.79
Fortis	Feb. 16 – Mar. 17	\$474.30	13 of 30	\$68.51
Total				\$290.40

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid utilities under section 67 of the Act, in the amount of \$290.40.

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

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

The Landlord testified that the Tenants damaged the unit by means of causing mold and water damage and damaging the walls but has not yet had the damage repaired. I decline to find the estimates of the repair costs to be reliable evidence of the loss caused – the value of the loss will only be crystallized when and if the Landlord has the damage repaired. Further, I find that the Landlord has not proven that the Tenants caused the mold and water damage with sufficient reliable evidence. As the tenancy ended at the end of February 2023, the Landlord has had ample time to initiate repairs and establish their entitlement to compensation.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

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

While the Landlord has testified to a number of incidents that could be characterized as harassment, she has not submitted any evidence as to the damage or loss that has resulted, nor the amount or value of that loss. I therefore find that the Landlord has not proven her claim for mental suffering due to harassment, and I decline to make an award under this heading.

I find that the Landlord has not mitigated their damage by repairing the rental unit in a timely fashion and seeking new tenants. I therefore decline to make an award under this heading.

The landlord did not make submissions on what items the Tenants left or the cost incurred to remove the same, and I therefore cannot make an award under this heading.

Finally, with respect to the Landlord's claim for mortgage costs, these are costs that the Landlord would have to bear in any event; they could not be caused by any action or negligence on the part of the Tenants.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, 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?

Alternatively, are the Tenants entitled to the return of their security deposit?

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.

I accept ME's uncontradicted evidence that a final condition inspection was not conducted. As a result, the Landlord's entitlement to claim against the deposit is extinguished.

I find that the Landlord is deemed to have received the Tenant's forwarding address on October 29th, 2023. The Landlord was therefore obligated to return the Tenant's deposit, together with interest, by November 13th. Because the Landlord's right to claim against the deposit was extinguished, the Landlord's present application does not prevent the doubling of the deposit under section 38(6).

I therefore order the return of the doubled deposit plus interest pursuant to section 38 of the Act. The interest on the deposits I calculate in accordance with the Regulations to be \$44.58. The total deposit to be returned is therefore \$3,489.16.

However, I retain discretion under section 72 of the Act to set off any amount owing to the Landlord against a security deposit. As in most circumstances, I find it is appropriate to do so here.

Is the either party entitled to recover the filing fee for this application?

As the Tenants were substantially successful in their application, and the Landlord was largely unsuccessful in her application, I grant the Tenants' application for authorization to recover the filing fee for their application from the Tenant under section 72 of the Act and dismiss the Landlord's application to recover the filing fee for her application.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$1,800.00** under the following terms:

Monetary Issue	Granted Amount
return of the Tenants' deposit, including interest, under section 38 of the Act	\$3,489.16
authorization for the Tenants to recover the filing fee from the Landlord	\$100.00
(less) unpaid utilities owing to the Landlord	(\$290.40)
Total Amount	\$3,298.76

The Tenants are 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 claim for unpaid utilities is granted; the balance of the Landlord's application 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: March 28, 2024