



DECISION

Introduction

This hearing dealt with 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

It also dealt with the Tenants Application under the Act for:

- a Monetary Order for the return of all or a portion of their security 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 Tenants HG and HS attended the hearing. The Landlord did not attend the hearing. The hearing began at 1:30pm and ended at 2:04pm.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant HG said that the Proceeding Packages were served by registered mail at the address where the Landlord resides. Receipts confirming service were submitted. I am satisfied with service of the Proceeding Package on the Landlord by the Tenants.

Service of Evidence

The Tenant HG said that all evidence was served by registered mail at the address where the Landlord resides. Receipts confirming service were submitted. I am satisfied with service of evidence by the Tenants.

Preliminary Matters – Duplicate Application

At the outset of the hearing, the Tenants indicated that they filed a duplicate application (ending in 3492). Because this application entirely overlapped with a separate application, it was dismissed without leave to reapply.

Preliminary Matters – Ace Agencies

At the outset of the hearing, the Tenants indicated that they were not proceeding against Ace Agencies, because they had no involvement in the tenancy and were named in error. Ace Agencies is therefore removed from this application.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to a Monetary Order for the return of their security deposit under sections 38 and 67 of the Act?

Are the Tenants entitled to recover their filing fees?

Background and Evidence

The tenancy began on November 1, 2023. Monthly rent was \$2,300.00. The Tenants also paid a \$1,150.00 security deposit on October 15, 2023. The Tenants received keys on or around October 29, 2023. They immediately discovered that the rental unit was unlivable –there was dog feces on the floors, it had not been cleaned, the Landlord had a considerable amount of belongings in it, there was mold in different areas of the rental unit, and the fridge was full of food. The state of the rental unit prevented the Tenants from actually moving in.

The Tenants immediately communicated with the Landlord about the various issues. The Landlord promised to address them. The Tenants paid \$1,500.00 on November 1, 2023 after having previously paid \$800.00. That same day, they wrote to the Landlord indicating that several material terms of the tenancy were being breached by the Landlord, and that the Tenants expected them to be corrected within 2 days. In particular, they referred to the Landlord's obligation to repair and maintain the rental unit, and the Tenants' right to quiet enjoyment. On November 5, 2023, the Landlord had not addressed the issues raised by the Tenants. The Tenants again wrote to the Landlord indicating that they were ending the tenancy with immediate effect.

The Tenants said they provided their forwarding address to the Landlord by email and by sending it in letter form to the Landlord by registered mail on November 5, 2023. The Landlord did not return the Tenants' deposit.

The Tenants claimed the return of double their security deposit. They also claimed the return of all rent paid, based on the fact that the rental unit was not habitable. In addition, they claimed costs arising from the Landlord's failure to provide a rental unit fit for occupation. They claimed moving expenses in the amount of \$200.00, \$300.00 for food loss and eating out, \$300.00 because the four occupants had to take an unanticipated day off work to move a second time, \$100.00 in gas, and \$100.00 because the Landlord damaged tables and mats that belonged to the Tenants.

Analysis

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Rent paid

I accept the undisputed evidence that the rental unit was uninhabitable, and that the Landlord did not meet the most basic obligation under the Act, which is to provide a safe and livable place to live. In particular, the rental unit was not in a livable state when the Tenants obtained possession. It was unlivable for a number of reasons, including animal feces in the house, excessive dirt, mold, garbage, exposed insulation and the many possessions left by the Landlord. In the circumstances, I find it is appropriate to award compensation for rent paid for November 2023. Because the Landlord did not provide a rental unit in a livable state and the Tenants were effectively deprived of the opportunity to move in, they should not be held to the obligation to pay rent. I therefore find that the Tenants are entitled to the return rent paid for November 2023, which was \$2,300.00.

Moving expenses

I find that the Tenants had to move their belongings a second time as a result of the Landlord's conduct. I find it is appropriate to award the Tenants \$77.90 plus \$20.00 in gas in relation to this unnecessary move. I do not award the Tenants the full amount claimed because they would have incurred some moving costs regardless of the Landlord's conduct.

Inconvenience expenses

I group the lost food, extra takeout, and additional days off together because they are related claims. The Tenants did not provide documentary evidence in relation to these claims. I do accept that they had to take extra days off work (4 days between 4 adults)

and lost food because they could not store it in the fridge, which was full and moldy. In total, I find it is appropriate to award the Tenants' nominal damages in the amount of \$400.00 in relation to this item.

Fuel

The Tenants said that they incurred additional fuel costs because of repeated attempts to retrieve keys only for them to ultimately be unavailable. No evidence was submitted showing the fuel costs incurred by the Tenants. I accept that the Landlord's conduct led to unnecessary trips on the part of the Tenants. I therefore award the Tenants nominal damages in the amount of \$25.00.

Damage

The Tenants said that the Landlord damaged mats and a table. I accept that the Landlord damaged some of the Tenants' belongings by storing them outside in the rain. I award the Tenants \$25.00.

Are the Tenants entitled to a Monetary Order for the return of their security deposit under sections 38 and 67 of the Act?

The Landlord has not returned the Tenants' deposit or filed an application to claim against the deposit, as required by section 38 of the Act. I accept that the Tenants provided their forwarding address by registered mail. I find that the Landlord received the Tenant's forwarding address 5 days after it was sent, namely on November 11, 2023. The Tenants are entitled to the return of double the security deposit.

Are the Tenants entitled to recover their filing fees?

The Tenants were successful and are entitled to recover the filing fees for the two files (\$200.00). They are not entitled to recover the filing fee for the duplicate application.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$5,359.31 under the following terms:

Monetary Issue	Granted Amount
Security deposit doubled, plus applicable interest	\$2,311.41

Monetary compensation	\$2,847.90
Filing fee	\$200.00
Total Amount	\$5,359.31

The Tenants are provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. The Order may be filed and enforced in Small Claims 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 18, 2024

Residential Tenancy Branch