



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes XX, XX

Introduction

This hearing dealt with the Landlord's December 11, 2023, and the Tenants' January 23, 2024, Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

The Landlord:

- a Monetary Order for unpaid rent or utilities under section 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 Tenants:

- 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

Service of Notice of Dispute Resolution Proceeding

- I find that Tenant H.R. is deemed to have been served in accordance with section 89(1) of the Act.
- I find that Tenant S.A. is deemed to have been served in accordance with section 89(1) of the Act.
- I find that Landlord A.F. was served on January 27, 2024, by registered mail in accordance with section 89(1) of the Act. The Tenants provided a copy of the

Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

- Based on the submissions before me, I find that the Landlord's evidence was not initially served to the Tenants in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

Preliminary Matter - Service

At the outset of the previous hearing held on April 16, 2024, a question arose regarding the Landlord's service of Notice of Dispute Resolution Proceeding and evidence. The Landlord testified that he used an email address that had been used to communicate with the Tenants in the past and that he understood was the one the Tenants had directed him to use in a December 26, 2023, letter mailed to the Landlord following the end of the tenancy.

The Tenants testified that they only provided the Landlord with permission to use the email address for the purpose of repayment of the security deposit.

Both parties conceded that email communication had been used in the past when dealing with other matters under dispute.

A finding was made that it was reasonable to conclude that the Landlord had understood that the email noted in Tenants' letter to be an Address for Service. The Tenants agreed to provide the Landlord with a new email address to which he could send the evidence he had provided to the *Residential Tenancy Branch* in support of his claim and the hearing was adjourned to an agreed date to allow the Tenants time to review the Landlord's evidence.

The Tenants did not attend the adjourned hearing and the Landlord testified that no new email address was provided to him and therefore he resent the notice and evidence on April 18, 2024, to the same address he had used before.

As the Tenants failed to provide an email address for service to the Landlord as agreed at the last hearing and would not allow the Landlord to use the email address provided on their application for dispute resolution to which he had previously sent his notice and evidence, I find that the Tenant's chose to avoid service and therefore are deemed to have been duly served.

As the Tenants failed to attend the hearing, the Tenants application is dismissed in its entirety without leave to reapply.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order for unpaid rent or utilities under section 67 of the Act?
2. Is the Landlord entitled to 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?
3. Is the Landlord entitled to 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?
4. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

Background and Evidence

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

Evidence was provided by the parties which indicates that the tenancy began on September 1, 2021, with a monthly rent of \$1,800.00 due on the first day of each month and security and pet damage deposits in the amount of \$1,800.00 were paid. The Landlord currently holds the security deposit in the amount of \$900.00. The Tenants are responsible for one third of the monthly hydro and gas utilities. The tenancy ended on December 4, 2023.

According to the Landlord, following the end of tenancy, the Tenants still owed \$426.28 in unpaid gas and hydro utilities for the period August to November 2023 and therefore he is seeking compensation for the total unpaid charges. Copies of utility bills for period August to November 2023, were submitted by the Landlord as evidence.

The Landlord testified that he is seeking compensation in the amount of \$1,520.00 due to expenses incurred based on an Order of possession that was granted to him during a previous hearing as well as cleaning and garbage removal as follows:

- \$120.00 for a BC Supreme Court fee for a Writ of Possession
- \$1,100.00 for bailiff services
- \$100.00 for six hours of his time for cleaning the rental unit
- \$200.00 for garbage removal

Copies of invoices and receipts for court fees, bailiff services and landfill charges in the amount of \$1,288.53 as well as pictures inside and outside of the unit were submitted as evidence.

The Landlord testified that no forwarding address was provided to him by the Tenants.

Analysis

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities under section 67 of the Act?

And

Is the Landlord entitled to 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?

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

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.

Based on the evidence before me, the undisputed testimony of the Landlord, and on a balance of probabilities, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

I find that the Tenants failed to pay \$426.28 in utilities and that the Landlord incurred \$1,239.53 in for fees and services required to remove the Tenants from the property following the Tenants failure to abide by the Order of Possession granted to the Landlord by an arbitrator following a previous hearing.

I further find, based on the evidence submitted and the undisputed testimony of the Landlord, that some cleaning and garbage removal was required after the tenancy ended and that the Landlord incurred a cost of \$49.00 for garbage disposal and a nominal cost in the amount of \$100.00 for the Landlord's time required to complete the cleaning not performed by the Tenants.

Therefore, I find the Landlord is entitled to a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$1,814.81.

Is the Landlord entitled to 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?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As no forwarding address was provided to the Landlord and the Landlord made his application on December 11, 2023, I find that the Landlord did make his application within 15 days of the tenancy ending/the forwarding address being provided.

Under section 38 of the Act, I allow the Landlord to retain all of the Tenants' security deposit in the amount of \$925.36, including interest, in partial satisfaction of the monetary award.

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

As the Landlord was 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.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$989.45** under the following terms:

Monetary Issue	Granted Amount
a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$1,814.81
authorization to retain the Tenants' security deposit under section 38(4) of the Act in partial satisfaction of the Monetary Order	-\$925.36
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$989.45

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 *Residential Tenancy Act*.

Dated: April 24, 2024

Residential Tenancy Branch