

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 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

This hearing also dealt with the Tenants' 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
- 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord argued that they never received the Proceeding Package from the Tenants and only received a courtesy copy from the RTB; however, the Landlord advised they were ready to proceed. The Tenant's advocate NS advised that the Landlord was served via registered mail and provided a Canada Post tracking number. Given that the Landlord is not taking issue with service of the Proceeding Package, I find that an analysis of service is not required.

I find that the Tenants were served on January 4, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord 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 Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- 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 and pet damage deposit in partial satisfaction of the monetary award requested?
- Is the Landlord entitled to recover the filing fee for this application from the Tenants?
- 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 all or a portion of their security and/or pet damage deposit?
- Are the Tenants entitled to recover the filing fee for this application from the Landlord?

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 August 22, 2023 and was for a fixed term until July 31, 2024, with a monthly rent of \$3,250.00, due on first day of the month, with a security deposit in the amount of \$1,550.00, paid August 10, 2023.

The parties advised that the Tenants provided a bank draft to the Landlord on August 10, 2023, for \$11,700.00, which covered 10 days of rent for August 2023, \$3,250.00 rent for September 2023, the \$1,550.00 security deposit and \$6,500.00 for two months of rent in advance for June and July 2024. The tenancy ended November 1, 2023.

The Landlord filed an application for unpaid rent, compensation, damages and requested to retain the security deposit. The Tenants' filed a cross application seeking compensation and the return of their security deposit.

Condition Inspection Report (CIR)

The parties confirmed that a condition inspection move-in report (Move-in CIR) was completed on August 22, 2023 and copy was provided to the Tenants shortly after. The parties confirmed that no condition inspection or move-out report was completed, and the Tenants were not offered two chances to participate in a move-out inspection. The Landlord argued that due to harassment and physical violence during the tenancy they did not feel comfortable having a move-out inspection with the Tenants and that they didn't have the Tenants forwarding address until December 2023. The Landlord advised they had the Tenants email address, but they didn't normally answer emails.

Background

The parties advised that the Tenants were removed from the rental unit by a bailiff on November 1, 2023. The Landlord advised they received an Order of Possession for a 10-Day Notice for Unpaid Rent through the RTB direct request process and served the Order of Possession on the Tenants October 25, 2023 (previous decision noted on Cover Page).

The Tenants position is that the Order of Possession was improperly obtained as the Tenants had paid in August 2023, for three months of rent. The Tenant's Advocate argued that the Landlord was seeking October 2023 rent in their 10-Day Notice; however, the Tenants were entitled to withhold rent because of the two extra months of rent they provided with the security deposit. The Tenants Advocate advised that the Tenants did not dispute the 10-Day Notice for Unpaid Rent and did not file a review of the direct request decision.

Unpaid Rent November 2023

The Landlord's position is that they are entitled to loss of rent for November 2023 because the Tenants did not clean the rental unit and left the rental unit damaged. The

Landlord provided some photographic evidence to show the cleaning and damages. The Landlord argued that the cleaning was not completed until November 28, 2023, and the repairs were not completed until November 27, 2023. The Landlord argued that the cleaning took so long because it had to be done in stages because of the furniture and items left behind.

The Tenant's position is that the Landlord has not supplied sufficient evidence of why the cleaning took so long to complete. The Tenants also supplied photographs of the rental unit after they had vacated. The Tenants' Advocate argued that there were only small amounts of belongings left behind and areas uncleaned.

Loss of Rental Income

The Landlord is seeking \$11,800.00 for loss of rental income for December 2023 to March 2024. The Landlord argued the tenancy agreement was for a fixed term until July 31, 2024, but because of problems with the Tenants the Landlord had to end the tenancy early. The Landlord argued they began advertising the rental unit starting November 29, 2023, on craigslist, Facebook Marketplace and other sites and even lowered the rent to \$2,800.00 but they have been unable to re-rent the rental unit because this area is difficult to find renters in the winter months. Copies of the Craigslist postings were provided as evidence.

The Tenants position is that the Landlord improperly obtained the Order of Possession as the Tenants did not owe October 2023 rent and that any loss did not come from the Tenants failure to comply. The Tenants' Advocate argued that the tenancy did not need to end as the Tenants were not behind on rent. Additionally, the Tenants' Advocate stated that it was unreasonable for the Landlord to wait until November 29, 2023, to advertise the rental unit was available.

Damages

The Landlord is seeking \$1,000.00 for the cleaning that was required after the Tenants were removed by the bailiff. The Landlord advised they hired multiple different cleaners throughout November 2023 and paid them cash. The Landlord did not provide any receipts and only provided an estimate from a cleaning company for \$630.00; however, that cleaning company was not hired. The Landlord argued around 30-35 hours were spent cleaning the rental unit. Some photographs showing the condition of the rental unit were provided.

The Tenants position is that the Landlord has not meet their requirement to prove the amount of damage or loss they incurred as the Landlord has not provided any receipts.

Landlord's Compensation

The Landlord is seeking the following amounts for compensation:

Item	Description	Amount
1	Bailiff's fee and	\$3,414.17
2	Supreme Court Filing Fee	\$120.00
3	Inspector	\$735.00
4	Pain and Suffering	\$10,000.00
	TOTAL	\$14,269.17

#1 Bailiff's fee and #2 Supreme Court Filing Fee

The Landlord's position is that a bailiff was required to remove the Tenants from the rental unit as the Tenants did not vacate after the Order of Possession was served on them. A copy of the bailiff's fee and the receipt for the Supreme Court filing fee was provided as evidence.

The Tenants position is that the Order of Possession obtained by the Landlord was improperly obtained as the Tenants did not owe October 2023 rent and that any loss did not come from the Tenants failure to comply. Additionally, the Tenants' Advocate argued that the Landlord failed to mitigate their loss as the Tenants had sent two emails to the Landlord advising they would move out on an agreed date, but the Landlord pursued the most expensive option to remove the Tenants. Copies of the emails were provided as evidence. The Tenants' Advocate argued that the Landlord should have pursued the mutual agreement to end tenancy offered by the Tenants as it would have significantly reduced any cost the Landlord incurred from pursuing the Order of Possession. The Landlord disputes every receiving these emails and argued the copies provided do not have their email address listed.

#3 Inspector

The Landlord is seeking the cost to have an inspector come out after the Tenants complained that the shower faucet was not working. The Landlord argued that they choose to bring out an inspector because they had a feeling the Tenants were making a false claim. The Landlord argued that the day of the inspection the Tenants would not let the inspector in and advised the shower faucet was working. An invoice and report from the Inspector were provided as evidence.

The Tenants' position is that no evidence has been provided to establish that the Tenants beached the Act, regulations or tenancy agreement. The Tenants also disagree with the Landlord's version of events and argued they were informed the inspector was there to inspect the electrical panel and they never denied the inspector entry.

#4 Pain and Suffering

The Landlord's position is that they are entitled to \$10,000.00 because of false accusations, harassment from the Tenants and an alleged threatening letter from the Tenants' other advocate they received on February 8, 2024. The Landlord argued that after reading the alleged threatening letter the Landlord began to have headaches and blurred vision. The Landlord provided a doctor's note and a medical document from an emergency room visit.

The Tenants' position is that the Landlord has failed to establish that any loss was the result of a violation of the Act, regulations or tenancy agreement. The Tenants' Advocate argued that the Landlord's argument is that a letter they received from the Tenants' advocate resulted in health problems, which the Tenants' Advocate argues is not a violation during the tenancy. Additionally, the Tenants' Advocate argued that the Landlord has also failed to provide evidence to quantify the loss.

Tenants' Compensation

The Tenants are seeking \$3,250.00 for the advance rent they paid in August 2023. A copy of the bank draft was provided to support the total paid by the Tenants in August 2023. The Tenants argued that the Landlord required they pay the last two months of rent in advance. The Tenants position is that this pre-payment they made in August 2023 for the last two months of rent is not allowed under the Act. The Tenants are only seeking the return of one of the extra months they paid, and the Landlord can keep the other over payment to cover October 2023 rent.

The Landlord's position is that the Tenants signed the tenancy agreement and offered to pay the two last months in advance. The Landlord confirmed that \$11,700.00 was paid by the Tenants in August 2023 and that included two extra months of rent.

Analysis

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

Unpaid Rent November 2023

As stated in Policy Guideline #3, "when a tenant vacates a rental unit or manufactured home site, they must leave it, reasonable clean and undamaged except for reasonable wear and tear. If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can seek compensation for loss of rent". A landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

The Landlord's position is that they are entitled to loss of rent for November 2023 due to the damages and cleaning. The Landlord did not claim for any damages but did claim for cleaning. The Landlord argued the cleaning was not completed until November 27, 2023. The Landlord provide some photos of the cleaning required and some damages, but did not complete a move-out CIR. I find the photographs supplied by the Landlord do not support that the cleaning took 27 days to complete. The photographs submitted by the Landlord showed dirty appliances, including the stove, fridge, oven and a dirty carpet and couch, which does not support why it took 27 days to complete the cleaning. Additionally, no move-out CIR was completed to show the condition of the rental unit upon move out. Given that the Landlord did not apply for damages, did not provide any receipts and did not complete a move-out CIR, I am unable to determine if the damages were repaired in a reasonable amount of time.

Additionally, the Landlord argued that the cleaning had to happen around the furniture; however, the rental unit was rented furnished, so the Tenants were required to leave the furniture behind. I find that any extra time added because of the furniture left behind was not the fault of the Tenants but because the rental unit was rented furnished.

Based on the above, I find that the Landlord has failed to mitigate their loss as the cleaning was not completed in a timely manner. As such, I decline to award any compensation for November 2023 rent.

Loss of Rental Income

As stated in Policy Guideline #3, if a landlord ends a fixed term tenancy early because of the tenant's actions, the landlord may also be able to claim the loss of rent for the remainder of the term of the tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. The Landlord is required to do whatever is reasonable to minimize their damage or loss. Policy Guideline #3 states "a landlord's duty to mitigate the loss includes renting the premises as soon as reasonable for a reasonable amount of rent".

The Landlord's position is that they had to end the fixed term tenancy early because the Tenants did not pay rent for October 2023 and that they have been unable to re-rent the rental unit. The Landlord is seeking \$11,800.00 in lost rent for December 2023 to March 2024. The Landlord argued they posted the rental unit for rent November 29, 2023 on craigslist and Facebook Marketplace and lowered rent to \$2,800.00, but they have been unable to re-rent because this area is difficult to rent during the winter months. As stated above, I find it unreasonable that the Landlord waited until November 29, 2023 to post the rental unit available for rent, given that the Landlord has failed to establish the extent of the cleaning and repairs took almost a month to complete. As such, I find that the Landlord has failed to mitigate their loss.

For the above reasons, the Landlord's application for a Monetary Order unpaid rent is dismissed, without leave to reapply.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report. 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 only provided an estimate from a cleaning company that they did not hire, and the Landlord is claiming for an amount greater than the estimate. The Landlord did not provide any receipts for the 30-35 hours of cleaning they are claiming occurred. As such, I find the Landlord failed to establish the amount or value of the loss or damage and I decline to award any compensation for the cleaning costs.

For the above reasons, the Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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

#1 Bailiff's fee & #2 Supreme Court Filing Fee

The Tenants did not move out of the rental unit in compliance with the Order of Possession issued October 24, 2023 and therefore breached an Order of the RTB. The Landlord provided a copy of the invoice for the bailiff's fees and the Supreme Court filing fee. The Tenants' Advocate argued that the Order of Possession was improperly obtained by the Landlord; however, the Tenants had to option to dispute the 10-Day Notice for Unpaid rent when it was issued and file a review of the direct request decision but did not. The Tenants' Advocate also argued the Landlord did not mitigate their loss, as the Tenants had offered to vacate on an agreed upon date, but the Landlord choose to ignore that and move forward with enforcing the Order of Possession. Based on Policy Guideline #5, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. I find that having a landlord mutually agree to a move-out date after they've been granted an Order of Possession is not practical or common-sense. As such, I find that the Landlord did mitigate their loss and are entitled to compensation for the Bailiff 's fee and Supreme Court filing fee.

#3 Inspector

Based on the evidence and submissions of both parties, I find that the Landlord has failed to establish that the Tenants' breached the Act, regulation or tenancy agreement which resulted in a loss. The Landlord made the decision to hire an inspector, rather than just going to assess if the shower faucet needed to be replaced. I find that the cost was incurred based on the decision of the Landlord and not because of a breach by the Tenants. As such, I decline to award any compensation for the inspector.

#4 Pain and Suffering

The Landlord's main argument was that the alleged harassing letter from the Tenants' other advocate caused health problems for them; however, this was a without prejudice letter to try to settle the dispute between the parties and was sent after the tenancy has ended. As such, I find that the Landlord has failed to establish that this loss or damage was the result of the Tenants breaching of the Act, regulation or tenancy agreement. Additionally, the Landlord has failed to prove the amount or value of the loss or damage. The Landlord also mentioned that the Tenants made false claims and there were incidents of assault; however, the Landlord has failed to establish how either of these alleged actions is in breach of the Act, regulation or tenancy agreement or what loss or damage resulted from these actions. Based on the above, I decline to award any compensation for pain and suffering.

Based on the above, I find the Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 67 of the Act, in the amount of \$3,534.17.

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

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord 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 tenant acted reasonably to minimize that damage or loss

Section 15 of the Act states that a landlord may require tenants to pay a security deposit as a condition or a term of entering into a tenancy agreement. Section 20 of the Act states that a landlord must not require or accept more than one security deposit in respect of the tenancy agreement and section 2 of the Regulation requires that a

security deposit not exceed one half of the monthly rent. Policy Guideline 29 states that irrespective of any agreement between a landlord and tenant, last month's rent forms part of the security deposit. I find that the Landlord has collected last two month's rent. I find that by collecting last two month's rent this forms part of the security deposit and the Landlord collected a security deposit that was over the allowable limit set in section 2 of the Regulation. Section 19(2) of the Act allows a tenant to recover the overpayment if a landlord collects a security deposit greater than the permitted amount.

Section 5 of the Act states that a landlord and tenant may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of this Act or the regulations is of no force or effect.

Landlord relied on the argument that the Tenants signed the tenancy agreement that collected rent at the beginning of the tenancy for the last two months. I find this term of the tenancy agreement and this argument amounts to an attempt to avoid the Act. As such, I find that term 4 of the tenancy agreement is of no force or effect.

Pursuant to section 62(3) of the Act, I award the Tenants a monetary order for \$3,250.00 which is the amount over the allowable limit. During the hearing the Tenants' Agent advised that the remaining \$3,250.00 paid in August 2023 can be retained by the Landlord for October 2023 rent. Any amount the Tenants owe the Landlord will be offset against any amount the Landlord owes the Tenants.

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

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 the forwarding address was provided on December 22, 2023, and the Landlord made their application on December 22, 2023, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

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.

Based on the testimony of the parties, I find that the Move-in CIR was completed, the Tenants participated, and a copy was provided to the Tenants.

Based on the testimony of the parties, I find that the Landlord did not provide the Tenants with two opportunities, one on the RTB form, to do a move-out inspection, did not do a move-out inspection with the Tenants and did not complete a move-out CIR. The Landlord argued they did not feel safe completing the move-out inspection with the Tenants and did not have the Tenants forwarding address until December 2023. However, the Act allows parties to have an agent act on their behalf during an inspection and the Landlord or the Tenants could have had an agent act on their behalf. Additionally, the Landlord has the Tenants email address to coordinate a move-out inspection and while the Landlord argued the Tenants did not respond by email, there were communications provided by both sides that occurred via email. As such, I do not find that either of these arguments from the Landlord excuses them from the Landlord's requirement to complete a move-out inspection and CIR. Given this, the Landlord extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24 of the Act. Based on the above, I find that the Tenants have not extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security or file against it. However, the Landlord extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24 of the Act and therefor the Landlord was required to claim against the security deposit for something other than damage or return the security deposit to the Tenants within 15 days of December 22, 2023. The Landlord did claim against the security deposit for something other than damages, and therefore did not breach section 38(1) of the Act.

Pursuant to section 72 of the Act, I offset any amount the Tenants owe the Landlord from the security deposit, plus interest.

Is the Landlord or Tenants entitled to recover the filing fee for this application from the Other?

As both parties were successful or partially successful in their application, both parties are entitled to the filing fee, these amounts are offset against each other.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$1,191.13** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for compensation under section 67 of the Act for the landlord	\$3,534.17
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
Amount Owed to the Landlord	\$3,634.17
The Tenants' security deposit, plus interest, in partial satisfaction of the Monetary Order for compensation	-\$1,575.30
A Monetary Order for compensation under section 67 of the Act for the Tenants	-\$3,150.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	-\$100.00
Amount Owed to the Tenants	\$1,191.13

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.

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: April 26, 2024

Residential Tenancy Branch