

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
- 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 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
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 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 was served by Canada Post registered mail on February 15, 2024, and the Landlord's agent MM (the Landlord's Agent) confirmed receipt. I find that the Landlord was deemed served February 20, 2024, in accordance with sections 89(1) and 90 of the Act.

The Landlord was approved for sub-service via email on March 26, 2024, and the Tenants were served March 28, 2024, via email. I find that the Tenants were deemed served March 31, 2024, in accordance with sections 89(1) and 90 of the Act.

Service of Evidence

The Landlord's Agent confirmed that they were served with evidence via Canada Post but took issue with a video link that was provided by the Tenants. The Landlord's Agent argued that providing a link to a video does not mean it was provided in the evidence package. The Landlord's Agent advised they did not try to search the link as they were worried about compromising the Landlord's computer. Tenant JM argued the link was easily searchable on YouTube. As stated in Rule of Procedure 3.10.4, providing a link to a copy of a link on a File Hosting Service, is an approved form of serving digital evidenced. I find YouTube counts as an approved form to serve evidence as it is accessible to the other party. As such, I will consider the video submitted by the Tenants.

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.

Preliminary Matters

- Removal of Occupants from Application

The Tenants listed their two children, who were occupants, on the application. As they were not listed as tenants on the tenancy agreement, I have removed their names from the application.

- Claim to Have the Landlord Comply with the Act

The Tenants' application also included a claim to have the Landlord comply with the Act, but the parties confirmed the tenancy has ended, as such this issue is moot. This issue has been dismissed without leave to reapply.

Issues to be Decided

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

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 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 May 1, 2023, and was for a fixed term until April 30, 2024, with a monthly rent of \$5,700.00, due on first day of the month, with a security deposit in the amount of \$2,850.00 paid on April 4, 2023. The tenancy ended March 2, 2024.

The Tenants are seeking compensation for costs associated with having to move. The Landlord is seeking unpaid rent for March and April 2024, because the tenancy ended before the fixed term tenancy, and to retain the security deposit.

Condition Inspection Report (CIR)

The parties advised a move-in inspection and CIR were completed on May 1, 2023. The Landlord's Agent argued they believe the previous property management company or previous Power of Attorney provided a copy to the Tenants. Tenant JM argued they never received a copy of the move-in CIR (the Move-In CIR). No evidence was submitted establishing that a copy was provided. The Parties confirmed a move-out inspection and CIR were completed on March 2, 2024 and a copy of the move-out CIR (the Move-Out CIR) was provided to the Tenants the same date. Tenant JM advised no forwarding address was provided to the Landlord.

Tenants' Compensation

The Tenants position is that they were required to vacate the tenancy early because the Landlord would not fix a security issue, which was the patio door lock. A video of the issues with the patio door was provided. Tenant KM argued they reported the issue with the patio door around January 2024 and the Landlord sent a locksmith on January 8, 2024, but no repairs were made until the Tenants sent a letter advising the Landlord, they were ending the tenancy. The patio door was fixed February 18, 2024. Tenant JM advised they never filed an application with the RTB above having the lock fixed, before deciding to vacate the rental unit.

The Landlord's Agent argued that a screw was put in to secure one of the patio doors and the toe lock was working and could be used to secure the other door. The Landlord's Agent argued that the lock was still working, and the door could still be closed.

The Tenants are seeking the following compensation:

Item	Description	Amount
1	Rent Differential	\$12,600.00
2	Moving Expenses	\$2,000.00
3	Utility, Service and Gym Transition Fee	\$300.00
4	Storage Fee	\$6,700.00
5	Non-Monetary Compensation	\$6,500.00
6	Lost-Wages and Childcare	\$2,900.00
	TOTAL	\$30,000.00

#1 Rent Differential

The Tenants are seeking the difference in rent between their rent at the rental unit and current market rent for a comparable property. Tenant JM advised that the Tenants were staying at an Airbnb after the vacated the rental unit and have lease at a new rental unit beginning May 2024.

The Landlord's position is that they are not responsible for the increased rent the Tenants will have to pay.

#2 Moving Expenses

The Tenants are seeking the expenses associated with having to hire moving trucks and a crew for the move. No receipts were provided.

The Landlord's position is that no receipts were provided, and the expenses seem larger than normal.

#3 Utility, Service and Gym Transition Fee

The Tenants are seeking the fee for having to transfer the gas, electrical and a gym membership. No receipts were provided

The Landlord's position is that these are normally costs associated with renting and that the Landlord is not responsible.

#4 Storage Fee

The Tenants are seeking the cost of having to store items in storage for the next 24 months. Tenant JM argued the rental unit had a garage space and the Tenants will have to store their items that don't fit in their new rental unit, and they had to store their items while they were waiting to transfer to a new rental unit. No receipts were provided.

The Landlord's position is that there are no receipts and that it is their choice to be renting an Airbnb rather than moving into a new property.

#5 Non-Monetary Compensation

The Tenants are seeking the cost for furniture they purchased specifically for the rental unit that will no longer fit in their new rental unit. No receipts were provided.

The Landlord's position is that no receipts were provided, and the Tenants should have purchased furniture that was suitable for multiple rentals or homes.

#5 Lost Wages

The Tenants are seeking compensation for missing work during the period they had to find a new rental unit and were moving. Tenant JM advised the Tenants are business owners and they are seeking the missed wage and business opportunities. No documents were provided to show what business opportunities were missed or what wages were lost. Tenant JM did advise the Tenants are not paid an hourly rate.

The Landlord's position is that no proof was provided.

Landlord's Lost Rent

The Landlord is seeking rent for March and April 2024, because the Tenants ended the fixed term tenancy early. The Landlord's Agent advised that the rental unit was posted for re-rent on March 6, 2024 on Facebook marketplace. The Landlord's Agent advised they had 28 inquiries, and 2 viewings but the rental unit has not been rented yet. A copy of the Facebook ad was provided as evidence. I will note the Tenants provided notice they were vacating for March 1, 2024, on February 8, 2024, and provided a formal

written notice on February 12, 2204, all by email. The emails were provided as evidence.

The Tenants' position is that they had to vacate the rental unit early because the Landlord would not address the security issue.

Analysis

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

As stated in Policy Guideline #3, where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time the tenant could have legally ended the tenancy. However, a landlord must take reasonable steps to minimize their damage or loss. Policy Guideline #3 states "a landlord's duty to mitigate the loss includes re-renting the premises as soon as possible for a reasonable amount of rent".

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

Based on the testimony of both parties and the tenancy agreement, I find that this was a fixed term tenancy that was set to end April 30, 2024 and the Tenants breached the tenancy agreement by vacating early on March 2, 2024. Based on the evidence of the Tenants I find that they informed the Landlord they were ending the tenancy early on February 10, 2024, yet the Landlord waited until March 6, 2024 to advertise the rental unit and only advertised on Facebook. As such, I find that the Landlord failed to minimize their loss and are not entitled to the lost rent for March and April 2024.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

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

#1 Rent Differential /#2 Moving Expenses / #3 Utility, Service and Gym Transition Fee /#4 Storage Fee/ #5 Non-Monetary Compensation/ #5 Lost Wages

The Tenants did not provide any receipts or invoices, employment documents, average market rent, to support the amounts they are claiming. As such, I find that the Tenants have failed to prove the amount or value of the loss. Additionally, I find that the Tenants did not act reasonably to minimize the damage or loss as they did not file an application with the RTB to have the lock fixed, before choosing to end their tenancy early. Based on the above, I decline to award any compensation for the rent differential, moving expenses, transition fees, storage fee, non-monetary compensation, and lost wages.

For the above reasons, the Tenants' application for a Monetary Order for compensation under section 67 of the Act is dismissed, without leave to reapply.

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 never provided and the Landlord made their application on April 29, 2024, 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.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to section 24 and 36 of the Act because extinguishment only relates to claims for damages to the rental unit and the Landlord's claims are not for damage to the rental unit.

I find that the Tenants did not extinguish their rights to the security deposit as they participated in the move-in and move-out inspection.

Section C1 of Policy Guideline #17 states, “the arbitrator will order the return of a security deposit, or any balance remaining on the deposit on a landlord’s application to retain all or part of the security deposit...whether or not the tenant has applied for dispute resolution for its return.”

As I have declined to award any compensation to the Landlord under their application, I order the security deposit, plus any interest, be returned to the Tenants. As the Tenants did not provide their forwarding address, the doubling provisions do not apply. I award the Tenants the return of their \$2,850.00 damage deposit and \$66.76, which is the interest that has accumulated since 2023, pursuant to section 4 of the Regulation.

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

As neither party was successful, I decline to award the filing fee for either party.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,916.76** under the following term:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$2,916.76
Total Amount	2,916.76

The Tenants provided with a Monetary 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 29, 2024

Residential Tenancy Branch