

DECISION

Introduction

This hearing dealt with an application filed by both the Tenants and the Landlord pursuant to the Residential Tenancy Act (the “Act”):

The Tenants applied 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 Landlord applied for:

- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas pursuant to 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 pursuant to section 67 of the Act?
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

Tenant RA attended the hearing for the Tenants.

Landlord DB attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As both parties were in attendance, I confirmed that there were no issues with service of the parties’ Proceeding Packages. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

Service of Evidence

The Tenant acknowledged that they uploaded evidence to the Residential Tenancy Branch late in response to the Landlord's application and they did not serve the Landlord with that evidence.

The Rules of Procedure require that all evidence upon which a party intends to rely must be served to the other party. As the Tenant did not serve the Landlord with their evidence, I have excluded said evidence from my consideration.

That said, the Tenant testified that they did serve the Landlord with the document titled "Final Release" which they only recently uploaded to the Residential Tenancy Branch website. The Landlord acknowledged receipt of the Final Release document. For that reason, I have considered the document included in the Tenant's evidence titled Final Release.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

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 recover the filing fee for this application from the Tenants?

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.

The parties agreed that this tenancy began on October 10, 2022. Monthly rent was \$3,800.00 a month due on the first day of the month. The Landlord collected a security deposit in the amount of \$1,900.00. A copy of the written tenancy agreement is submitted into evidence.

RA testified that the tenancy ended on April 1, 2023, when they vacated the rental unit prior to the end of their fixed term tenancy to accommodate the Landlord's medical needs. The Landlord testified that the term of the tenancy ended April 10, 2023.

The parties agree that no Move-In Condition Inspection Report or Move-Out Condition Inspection Report was completed or provided to the Tenants.

The Landlord acknowledged receipt of the Tenants' forwarding address by mail in early September. The Landlord testified that RA re-sent them the forwarding address again in December. The Landlord made their application for dispute resolution on February 12, 2024.

The Landlord is seeking outstanding BC Hydro costs in the amount of \$92.23. The Landlord testified that they were responsible for the cost of hydro during the terms of the tenancy in the amount up to and including \$60.00. Over a three-month period, the Tenants' hydro bill exceeded the \$60.00 maximum for a total amount of \$92.23. The Landlord submitted hydro bills to support this claim. RA testified that they do not dispute this claim.

The Landlord is seeking \$35.00 for the cost of a replacement key. The Landlord testified that the key fob was broken and required replacement for a cost of \$35.00. RA testified that they do not dispute this claim.

The Landlord is seeking a total of \$428.61 for the cost of replacement bedding. The Landlord testified that at the end of the tenancy, their mattress cover, fitted sheet and flat sheet were missing. The Landlord purchased replacement items of the same brand and quality. RA testified that they do not dispute this claim.

The Landlord is seeking \$997.50 for the cost of emergency restoration wall repairs and wall disinfection and 357.00 for the cost of emergency toilet re-installation. The Landlord submitted invoices to support these claims.

The Landlord testified that on January 25, 2023, there was an issue with a leakage from the toilet that caused significant damage to the rental unit and neighbouring units. The Landlord testified that the flood resulted from Tenant LB flushing cleansing wipes down the toilet. The Landlord submitted that their Home Owners' Association (HOA) required that they complete the remedial work immediately and charged the amounts back to their unit.

The Landlord testified that the HOA required that the Landlord pay upfront, and that the restoration company would not move forward until they paid. The Landlord testified that the Tenants caused the flood and are therefore responsible for the two invoices which were not covered by the insurance claim. The Landlord testified that they informed RA they would be deducting these costs from the Tenants' security deposit.

RA testified that the insurance should have covered all costs associated with the flood on January 25, 2023. They testified that they are unclear why all of the costs were not covered by insurance, and they believe the Landlord should have recovered all costs through the insurance claim and chose not to. RA testified that they did not agree that any of the above noted costs should be deducted from their security deposit.

RA directed my attention to the document titled Final Release which is included in their evidence and argued that the Landlord agreed that they are released from any future claims regarding the toilet leak on January 25, 2023, based on this document.

Analysis

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Section 38(4) allows a landlord to retain a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) 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, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 24 and 36 of the Act set out that landlords and tenants can extinguish their rights to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations").

Section 38(6) of the Act states that if the landlord does not return the deposits or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposits plus interest.

The Landlord agreed that they received the Tenants' forwarding address by mail on two separate occasions in September 2023 and again in December 2023. Neither party was able to provide a specific date. Based on section 38(1) of the Act, the Landlord was obligated to obtain the Tenants' written consent to keep the security and/or pet damage deposit or to file an application within 15 days after receiving the Tenants' forwarding address or the tenancy ending. Based on the testimony and evidence of the parties, I find that while the Landlord may have informed the Tenant that they would be retaining

a portion of the Tenant's security deposit, they did not obtain written consent from the Tenants to keep any portion of the Tenant's security deposit.

The Landlord filed an application for dispute resolution claiming against the Tenants' security deposit on February 12, 2024. Given the Landlord's acknowledgement of having received the Tenants' security deposit in September and December 2024, I find that the Landlord did not file an application for dispute resolution claiming against the Tenants' security deposit within 15 days of receiving the Tenants' forwarding address.

With that said, even had the Landlord filed their claim within fifteen days of having received the Tenant's forwarding address, I find that the Landlord extinguished their right to claim against the security deposit under section 24 of the Act, having not completed a Move-In Condition Inspection Report, and therefore, were required to return the security deposit in full.

I accept that the Landlord did not afford the Tenants and opportunity to participate in either a Move-In or Move-Out Condition Inspection. As a result, I find that the Tenants have not extinguished their right to claim against the security deposit under section 24 or section 36.

Based on the foregoing, under section 38(6) of the Act, I find that the Landlord must pay the Tenants double the security deposit and pet deposit plus interest as they have not complied with section 38(1) of the Act.

Policy Guideline 17 sets out that where a landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit and is not doubled.

Based on the foregoing, I order the Landlord to return to the Tenants double the security and pet deposit plus interest. To give effect to this order, the Tenants are awarded their claim in the amount of \$3,856.35 as set out below.

The Landlord is still entitled to claim for loss and damage. I have considered those claims below.

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

Hydro

The Landlord is seeking outstanding BC Hydro costs in the amount of \$92.23 for months in which the Tenant's usage exceeded the agreed upon amount of \$60.00 per month. The Tenant conceded that this money is owed to the Landlord.

Based on the foregoing, I find that the Landlord has established a claim for the outstanding hydro costs.

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 award in the amount of \$92.23 under section 67 of the Act as set out below.

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

Key Fob

The Landlord is seeking a monetary award in the amount of \$35.00 for the cost of a replacement key fob. The Tenant conceded that the key fob was damaged during the tenancy and did not dispute the Landlord's claim.

Based on the foregoing, I find that the Landlord has established a claim for the replacement key fob. 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 Landlord is entitled to a monetary award in the amount of \$35.00 under section 67 of the Act as set out below.

Flood Damages

The Landlord is seeking a total of \$1,354.50 (\$957.50 + \$357.00) for costs associated with the flood which occurred on January 25th, 2023. However, while I acknowledge these invoices may not have been covered by insurance and were in fact paid by the Landlord, I find based on the terms stated in the Final Release which was signed on August 8, 2023, the Landlord is precluded from making any future claims against the Tenants for damages resulting from the flood on January 25, 2023.

Importantly, the Landlord applied for dispute resolution on February 12, 2024, after they agreed to the terms of the Final Release. For this reason, I dismiss the Landlord's claim for compensation for damage or loss for costs associated with the flood of January 25, 2023, 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 pursuant to section 67 of the Act?

Bedding

The Landlord is seeking a monetary award in the amount of \$428.61 for the cost of replacement bedding that was missing at the end of the tenancy. The Tenant conceded that the items were missing and did not dispute the Landlord's claim.

Based on the foregoing, I find that the Landlord has established a claim for the replacement bedding in the amount of \$428.61 as set out below.

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 Landlord is entitled to a monetary award in the amount of \$428.61 under section 67 of the Act as set out below.

Photocopying

The Landlord is seeking \$10.81 for the cost of printing their documents and preparing for the hearing.

I have considered the Landlord's claim; however, the *Act* does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the *Act*. For that reason, I dismiss the landlord's claim for printing costs without leave to reapply.

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

As both parties were partially successful in their applications, I find that neither party is entitled to recover the filing fee from the other.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$3,300.69 under the following terms:

Monetary Issue	Granted Amount
Security Deposit (\$1,900.00 x 2)	\$3,800.00
Interest on Security Deposit	\$56.53
Landlord's Total Monetary Award (<i>Hydro, Bedding, Key Fob</i>)	-\$555.84
Total Amount	\$3,300.69

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: May 15, 2024

Residential Tenancy Branch