

## **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 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 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
- 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 confirmed that he was served with notice of the dispute resolution proceeding.

The Tenant said that he was served with the Landlord's notice of the dispute resolution proceeding. Despite this, he agreed to proceed with the hearing of the Landlord's application.

### **Service of Evidence**

I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

I find that the Landlord's evidence was served to the Tenant 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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to compensation for my monetary loss or other money owed?

Is the Landlord entitled to retain a security and/or pet damage deposit?

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

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

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

## **Background and Evidence**

I have reviewed all evidence but will refer only to what I find relevant for my decision.

The evidence indicates a monthly rent of \$3,700.00, due on the first day of the month. The Landlord received a security deposit from the Tenant in the amount of \$1,850.00.

The Landlord said that the tenancy ended as a result of having confronted the Tenant about unauthorized short-term rental activities, which he had been informed of by the strata manager.

The Tenant denied engaging in any short-term rental activity.

The Tenant vacated the rental unit on August 26, 2023, pursuant to a signed, written mutual agreement with the Landlord indicating that he would do so.

In support of his allegations, the Landlord provided website screenshots showing his rental unit and numerous reviews of the property by people who had stayed there.

On September 7, 2023, the Landlord applied for dispute resolution, claiming compensation for loss of rental revenue, as well as authorization to retain the Tenant's security deposit.

On September 19, 2023, the Tenant applied for dispute resolution, claiming compensation, as well as the return of his security deposit.

Both applications were heard concurrently and dismissed on November 20, 2023, as a result of the parties having failed to properly serve each other with their Notice of dispute resolution in accordance with the applicable legislation.

On December 8, 2023, the Landlord again applied for dispute resolution, claiming compensation for loss of rental revenue, as well as authorization to retain the Tenant's security deposit.

Specifically, the Landlord claimed \$1,356.00 for loss of rent for the period spanning September 1 through 11. The Landlord said that he incurred this loss as a result of the Tenant unexpectedly vacating the unit on August 26, 2023. The Landlord claimed that as a result of the Tenant's failure to provide one month notice he was unable to secure another tenant for this period.

The Landlord also claimed \$1,400.00 for expenses he incurred as a result of fines that he said he had received from the strata management which he said were issued as a result of their findings that the Tenant was engaged in short term rental activities which were prohibited in this building.

On December 20, 2023, the Tenant again applied for dispute resolution, claiming compensation, as well as the return of his security deposit.

Specifically, the Tenant claimed that he was entitled to reimbursement of \$3,700.00 in rent paid for the month of August as a result of the Landlord restricting his ability to access the unit on August 7, 2023. Although he had initially claimed reimbursement of rent for the months of June and July, at the hearing he indicated that he was withdrawing these claims.

The Tenant also claimed \$88.00, which he said was a fee he incurred as a result of cancelling his one-year internet subscription prior to the end of the term.

Lastly, the Tenant claimed \$4,000.00 which he said were the costs he incurred as a result of having to rent another apartment for the month of August.

The Tenant suggested that the fines that the Landlord is seeking to recover were levied before he rented the apartment, and they must be in relation to short term rental activities of the previous Tenant.

The Tenant said that he sent his forwarding address to the Landlord by registered mail on November 22, 2023, and that his records show that this was received on November 24, 2023.

The Landlord denied that he had locked the Tenant out of the unit. He said that while there was a building-wide issue with the fob that interfered with the ability of occupants to enter the front door or use the elevator, this only lasted a few days. The Landlord

provided a written statement from the strata manager the fob issue was related to problem with the fire alarm system which was interfering with access to some floors.

There is a concierge at the building who is available and would have been able to provide access to the Tenant. The Landlord added that the Tenant still had keys to the rental unit and could have used the stairs as an alternative option to the elevator.

The Landlord further denied that the Tenant contacted him to attempt to resolve the issue with the fob.

The Landlord noted that the forwarding address that the Tenant provided him was the same address that he provided on his initial application for the rental unit. The Landlord proposed that this further supports his argument that the Tenant was not residing in the rental unit but was instead renting it out to people on a short-term basis.

## **Analysis**

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

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

It is clear from the evidence received that the Landlord is not seeking unpaid rent, but rather losses incurred as a result of the rental unit remaining vacant after the Tenant left.

I have determined that it is appropriate that this aspect of the Landlord's claim be evaluated in the context of my consideration as to the whether the Landlord is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 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

*Loss of Rent for September*

The Landlord claimed \$1,356.00 for loss of rent for the month of September. The Landlord said that he incurred this loss as a result of the Tenant unexpectedly vacating the unit on August 26, 2023. The Landlord claimed that as a result of the Tenant's failure to provide one month notice he was unable to secure another Tenant for that month.

Residential Tenancy Branch Policy Guideline #13 states that in a monthly or periodic tenancy, when a Tenant serves the Landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the Landlord receives the notice and on the day before rent is due.

I note that in this instance, the Tenant did not provide the Landlord with notice to end the tenancy. Rather, the Landlord and Tenant mutually agreed in writing to end the tenancy on August 26, 2024. As such, I find that both parties are equally responsible for the tenancy ending.

Residential Tenancy Branch Policy Guideline #13 confirms that a tenancy may also end if the Landlord and any Tenant or co-Tenant mutually agree in writing to end the tenancy.

In the circumstances, I find that the loss claimed by the Landlord is not the result of the Tenant's failure to comply with the Act, regulation, or tenancy agreement.

Although the mutual agreement indicates that the Landlord would return the Tenant's security deposit within 14 days if they are able to rent the unit by September 2023, it does not include a statement to the effect that the Landlord had permission to retain it the security deposit if they did not.

I find that the Landlord has not established their claim for loss of rent for September.

For this reason, the Landlord's claim for loss of rent for September is dismissed.

### *Strata Chargeback Fines*

The Landlord claimed \$1,400.00 for expenses he incurred as a result of fines that he said he had received from the strata management which he said were issued as a result of their findings that the Tenant was engaged in short term rental activities which were prohibited in this building.

I find that the Tenant unit was engaged in unauthorized short-term rental activities. I accept that the Landlord was fined in the amount claimed, \$1,400.00. I also find that the fines received were incurred during the Tenant's lease, and as a result of the Tenant's actions.

In reaching the foregoing conclusions, I have considered the multiple notices of by-law complaints which included pictures of individuals who were not the Tenant who

appeared to be residing at the rental unit. I have also considered the written statement from the strata manager confirming that multiple individuals had resided at the rental unit and conveyed their understanding that they were occupying a short-term rental.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for \$1,400.00.

Under section 72 of the Act, I allow the Landlord to retain \$1,400.00 from the Tenant's security deposits in satisfaction of the monetary award.

**Is the Tenant 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 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

*Reimbursement of August Rent; Compensation for Renting another Apartment*

The Tenant claimed that he was entitled to reimbursement of \$3,700.00 in rent paid for the month of August as a result of the Landlord restricting his ability to access the unit on August 7, 2023.

The Tenant further claimed \$4,000.00 which he said were the costs he incurred as a result of having to rent another apartment for the month of August.

In the circumstances, I find that the loss claimed by the Tenant is not the result of the Landlord's failure to comply with the Act, regulation, or tenancy agreement, but rather their own failure to take mitigating action by making inquiries with the Landlord and concierge.

In reaching this conclusion, I have preferred the Landlord's evidence that he did not cause the Tenant to be locked out, and that the Tenant did not make reasonable inquiries or attempts to resolve this issue. I also note that the strata manager confirmed that the fob issue was a temporary issue which was related to problems with the fire alarm system which was interfering with access to some floors.

I also note that there is a concierge at the building who is available and would have been able to provide access to the Tenant. The Landlord added that the Tenant still had keys to the rental unit which he continued to be able to access at all times and that he could have used the stairs as an alternative option to the elevator.

I find that the Tenant unit was engaged in unauthorized short-term rental activities, and that the Tenant lacked motivation to resolve this expeditiously as the rental unit was not his primary residence. In reaching this conclusion, I have accepted the Landlord's evidence that the Tenant's forwarding address was the same address indicated on his application and find on a balance of probabilities that he maintained a separate residence throughout his tenancy for the purpose of facilitating his short-term rental business activities.

I find that the Tenant has not established their claim for reimbursement of \$3,700.00 in rent paid for the month of August.

I further find that the Tenant has not established their claim for costs he incurred as a result of having to rent another apartment for the month of August.

For this reason, the Tenant's claims for reimbursement of rent for August and compensation for renting another apartment are dismissed.

#### *Internet Subscription*

The Tenant claimed \$88.00, which he said was a fee he incurred as a result of cancelling his one-year internet subscription prior to the end of the term.

As previously noted, the Landlord and Tenant mutually agreed in writing to end the tenancy on August 26, 2024. As such, I find that both parties are equally responsible for the tenancy ending.

In the circumstances, I find that the loss claimed by the Tenant is not the result of the Landlord's failure to comply with the Act, regulation, or tenancy agreement.

I find that the Tenant has not established their claim for reimbursement of their internet subscription cancellation fee.

For this reason, the Tenant's claim for loss for their internet subscription cancellation fee is dismissed.

For the above reasons, the Tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

#### **Is the Landlord entitled to retain a security and/or pet damage deposit? 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 from 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.

I find that the Tenant did not agree in writing that the Landlord could retain any part of the damage deposit.

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.

I accept the Tenant's undisputed evidence that he provided the Landlord with his forwarding address via registered mail and that this was received November 24, 2023.

The Landlord therefore had 15 days from November 24, 2023, or until December 9, 2023, to either repay the security deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

The Landlord applied for dispute resolution on December 8, 2023, which was within 15 days. I find that the Landlord filed a claim against the Tenant within 15 days of receiving the Tenant's forwarding address as required under section 38(1).

Under section 72 of the Act, I have allowed the Landlord to retain \$1,400.00 of the Tenant's security deposits.

I find that the Tenant is entitled to the balance of his \$1,850.00 security deposit, which is \$400.00 (\$1,850.00 - \$1,400.00).

Therefore, I find the Tenant is entitled to a Monetary Order for the return of a portion of their security deposit under section 67 of the Act, in the amount of \$450.00.

**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.

The Landlord continues to hold the Tenant's security deposit in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$100.00 of the Tenant's security deposit in satisfaction of the monetary orders.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.



Therefore, I find the Tenant is entitled to a Monetary Order for the recovery of their \$100.00 filing fee.

## Conclusion

The Landlord's application for a Monetary Order for unpaid rent under section 67 is dismissed, without leave to reapply.

I allow the Landlord to retain \$1,400.00 from the Tenant's security deposits in satisfaction of the monetary award for compensation for damage or loss under the Act, regulation or tenancy agreement.

Tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

I order the Landlord to retain \$100.00 of the Tenant's security deposit in satisfaction of the monetary orders.

I find the Tenant is entitled to a Monetary Order for the recovery of their \$100.00 filing fee.

I find the Tenant is entitled to a Monetary Order for the balance of their security deposit under section 67 of the Act.

I grant the Tenant a Monetary Order in the amount of **\$450.00** under the following terms:

Monetary Issue	Granted Amount
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	\$1,850.00
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	-\$1,400.00
authorization for the Landlord to recover his filing fee for this application from the Tenant under section 72 of the Act	-\$100.00
Tenant's Filing Fee	\$100.00
<b>Total Amount</b>	<b>\$450.00</b>

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 1, 2024

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Residential Tenancy Branch