DECISION

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenant files his own application, seeking the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

L.P. attended as the Landlord. M.M. attended with the Landlord and acted as his agent with respect to certain matters concerning the tenancy. A.P. attended as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Landlord entitled to a monetary order for compensation due to the Tenant's breach of the tenancy agreement, *Act*, or regulations?
2) Is the Tenant entitled to a monetary order for compensation due to the Landlord's breach of the tenancy agreement, *Act*, or regulations?
3) Who is entitled to the security deposit?
4) Is either party entitled to their filing fee?

Evidence and Analysis

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

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on October 1, 2020.
- The Tenant moved out of the rental unit on April 20, 2023.
- Rent of $1,545.00 was due on the first day of each month.
- A security deposit of $750.00 was paid by the Tenant.

I have been provided with a copy of the tenancy agreement confirming these details.

By way of some context, the parties advise that the tenancy ended after the Landlord obtained an order of possession, the file number for which is on the cover page of this decision.

Review of the file for the previous matter shows that the Landlord obtained the order of possession on April 4, 2023 after a hearing was held on March 31, 2023. The order of possession was effective two days after it was received by the Tenant. The Tenant then filed for review consideration on April 6, 2023, which was ultimately dismissed by way of a decision made on April 14, 2023.

The parties have also been before the Residential Tenancy Branch on another matter in which the Tenant claimed for the return of his filing fee, the file number for which is noted on the cover page of this decision. By way of decision dated December 18, 2023, the Tenant's substantive monetary claims were dismissed with leave to reapply due to issues pertaining to service.

Despite the dismissal, the arbitrator at the December 18, 2023 hearing took upon themselves to deem that the Landlord received the Tenant's forwarding address on December 18, 2023.

Legal Test Relevant to the Monetary Claims

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of *the Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.

2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Is the Landlord entitled to a monetary order for compensation due to the Tenant's breach of the tenancy agreement, Act, or regulations?

The Landlord seeks $3,377.25 in compensation, describing his claim as follows in the application:

> Supply and install 1 polywood door blind due tenant damage Cleaning services Main Floor Rent Loss = Two Months January 18th - March 1st 2023 - Tenants vacated because of [the Tenant's] harassment Monthly Rent $ 2,595.00 Rental Loss

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy.

Section 32(2) and 32(3) of the *Act* imposes an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

Section 37(2) of the *Act* imposes an obligation on tenants at the end of the tenancy to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Claim for Blind Replacement

The Landlord advises that he is seeking the replacement costs of blinds he says was destroyed by a dog harboured by the Tenant at the rental unit. The Landlord says the dog belonged to the Tenant's girlfriend. I am told by the Landlord that the blinds were new when the tenancy started and were replaced at a cost of $409.50 on January 22, 2021, as shown in an invoice in evidence.

The Tenant denies having a dog at the residential property and denies damaging the blinds. According to the Tenant, the blinds in question were never working and were replaced by the Landlord shortly after the tenancy started. I am further told by the Tenant that Landlord made no mention of the blinds until filing this application.

I am told by the Landlord that a move-in condition inspection report was prepared on October 1, 2020. However, no move-in condition inspection report has been put into evidence.

It is worth noting that the Landlord, as claimant here, must demonstrate it is more likely than not that the Tenant or his guest caused the damage in breach of s. 32(2) and 32(3) of the *Act*. On the basis of the conflicting testimony, I am unable to make a finding that the blinds were working when the tenancy started or that they were damaged by the Tenant or his guest or his guest's dog.

The Landlord argued the Tenant is lying. With respect, there is no basis upon which I can conclude the Landlord is being more truthful than the Tenant on the question of the blinds. Indeed, both narratives are equally plausible. Bare assertions of untruthfulness are of no substance without support of documentary evidence proving an affirmed statement by one party or another is incorrect.

I find that the Landlord has failed to discharge his onus of proving this aspect of his claim. Accordingly, I dismiss the claim for the blind replacement, without leave to reapply.

Cleaning Costs

The Landlord argued the Tenant left the rental unit in an unclean state and that he paid $372.75 to clean the rental unit.

The Tenant argued that the rental unit was cleaned by him after he vacated and directs me to a series of photographs in his evidence which he says were taken on April 20, 2023.

No move-out condition inspection report has been put into evidence as I am told none was prepared after the tenancy ended.

To be clear, the standard of cleanliness expected under s. 37(2) of the *Act* is "reasonable cleanliness".

After review of the Tenant's photographs, I find that the Tenant did leave the rental unit in a reasonably clean state. Indeed, none of the photographs show anything approaching uncleanliness and I have been provided no evidence by the Landlord to support the rental unit was unclean in any way.

I note that the Tenant's evidence includes text messages between him and the Landlord's agent, including the following exchange from April 21, 2023:

Tenant: Hi [Agent], did u hear from [the Landlord]?

Agent: Hello yes I did the place locks (sic) great.

I have redacted personal identifying information from the reproduction above. I accept that “locks” was a misspelling of “looks” and refers to the overall cleanliness of the rental unit, which corresponds with my assessment of the rental unit’s cleanliness as demonstrated in the photographs provided by the Tenant.

I find that the Landlord has failed to demonstrate the Tenant failed to leave the rental unit in an unreasonably clean state. As such, I dismiss this portion of the Landlord’s claim, without leave to reapply.

Lost Rental Income

The Landlord also seeks $2,595.00 in lost rental income. I am told by the Landlord that there was some dispute between the Tenant and the upper tenants at the residential property. The Landlord advised that the upper tenants ended their tenancy early citing the conflict with the Tenant as the reason for doing so.

The Landlord advised that the tenants for the upper rental unit was vacated in December 2022 and re-rented to new tenants on February 5, 2023. I am told that rent for the upper rental unit was $2,595.00, though I have not been provided with a tenancy agreement for the upper tenants who vacated.

I enquired when the tenants for the upper rental unit provided notice they were vacating. The Landlord advised that he received an email on January 11, 2023 from the tenants that they had moved most of their belongings on December 27, 2023 and would be cleaning and taking their remaining belongings, leaving the rental unit vacant, in January 14th or 15th. The Landlord says the upper tenants did not pay rent for January 2023.

In a written submission by the Landlord in his evidence, there is some mention that the upper tenants left on January 18, 2023, with their rental unit being occupied by new tenants on March 1, 2023. The submission further indicates that the Landlord received rent for January 2023 but not for February 2023.

There is some inconsistency in the Landlord’s testimony against a written submission put into evidence. Though not summarized above, the Landlord did indicate during the hearing that he was paid rent for January 2023, but not February 2023, though confirmed the new tenants moved into the rental unit on February 5, 2023. The Landlord then reclarified that the narrative first listed above was correct.

I accept that the written submission is unaffirmed and prefer the oral testimony provided to me by the Landlord at the hearing, though I do note the inconsistencies raise questions on the reliability of the Landlord’s testimony in this regard.

A tenant may end a tenancy by giving notice to their landlord pursuant to s. 45 of the *Act*. I am told by the Landlord that the upper tenants were in a monthly periodic tenancy. In the case of periodic tenancies, the effective date of the tenant’s notice cannot be

earlier than one month after the date the landlord receives the notice and is on a day before rent is due under the tenancy agreement.

The issue with the Landlord's claim for lost rental income is that the tenants for the upper rental unit vacated without giving proper notice under s. 45 of the *Act* having effectively vacated before even notifying the Landlord of the same and failing to pay rent for January 2023.

Even if I were to accept the Tenant effectively drove the upper tenants out, I do not find it appropriate for the Landlord to seek compensation from the Tenant due to the upper tenant's failure to give proper notice and failure to pay rent. The Landlord cannot make himself whole by seeking compensation from the Tenant due to the upper tenants ending their tenancy improperly. If the Landlord has a claim for January's rent, it is against the upper tenants, not the Tenant.

I find that the Landlord is not entitled to compensation from the Tenant for lost rental income. This claim is dismissed without leave to reapply.

2) Is the Tenant entitled to a monetary order for compensation due to the Landlord's breach of the tenancy agreement, Act, or regulations?

The Tenant, in his application, describes his claim for monetary compensation as follows:

> Landlord cashed rent cheque after eviction was granted and refused to return the difference in rent from date of move-out. Rent is $1545/month (pro-rated $51.50/day). Owed for 11 days (April 20-30): $566.50 + $16.18 Interest = $582.68.

As mentioned above, the Tenant was evicted by order granted on April 4, 2023 effective two days after it was received. The Tenant effectively stayed enforcement of the order pending the outcome of his review application, which was dismissed on April 14, 2023.

It was further confirmed that rent was due on the first of each month.

The problem with the Tenant's claims is that it presupposes an entitlement to the return of rent for a period in which the tenant no longer occupies the rental unit. To be clear, the Tenant's obligation to pay rent <u>in full</u> is triggered on the first day of each month, irrespective of whether he vacated mid-month. That obligation flows directly from the tenancy agreement and is robustly protected by s. 26(1) of the *Act*.

The Tenant may argue the Landlord deposited his rent cheque on April 3, 2023. However, the tenancy did not end until the order of possession was granted on April 4, 2023. Further, rent was due on April 1, 2023 and the hearing took place on March 31, 2023. The Landlord was entitled to rent for April on April 1, 2023.

Though landlords and tenants may agree to returning pro-rated rent for periods in which a rental unit is not occupied by a tenant, there is no obligation under the *Act* to do so.

I find that the Tenant has failed to demonstrate any breach of the *Act*, tenancy agreement, or regulations by the Landlord with respect to his claim for pro-rated rent. Indeed, the Tenant had a clear obligation to pay rent in full on the first, irrespective of when he vacated.

3) Who is entitled to the security deposit?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch. A landlord may not claim against the deposit if the application is made outside of the 15-day window established by s. 38 or their right to do so has been extinguished by ss. 24 or 36.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

Extinguishment

I am told that there was a move-in condition inspection report with the parties conducting the move-in inspection on October 1, 2020. However, I have not been provided a copy of the move-in condition inspection report.

No move-out condition inspection report was prepared. The Tenant's evidence includes text messages with the Landlord's agent, including one on April 28, 2023 in which the Tenant asks if the Landlord would schedule a move-out inspection. No move-out inspection was ever scheduled.

To be clear, landlords are expected to prepare a condition inspection report at the beginning and end of the tenancy under ss. 23 and 35 of the *Act*. This includes an obligation to schedule the condition inspections.

I am told that there is a move-in condition inspection report. However, none is provided. I am unable to find that the move-in condition inspection report, if it was completed, was done in accordance with the regulations as required by s. 23(4) of the *Act*. I further accept that the Landlord failed to schedule a move-out inspection as required under s. 35(3) of the *Act*.

I find that the Landlord's right to claim against the security deposit for damage to the rental unit has been extinguished under ss. 24 and 35 of the *Act*.

Forwarding Address

As noted above, in the previous matter, the arbitrator deemed the Tenant provided his forwarding address on December 18, 2023. It is unclear to me why the arbitrator made this finding as the application had not been served nor was a full hearing conducted.

I am cognizant of the doctrine of res judicata, in particular the question of issue estoppel. There is an interest in ensuring consistency in decision making processes, particularly when a final decision has been made on a particular issue.

I also note that s. 64(2) of the *Act* requires me, as the Director's delegate, to make each decision on its merits and that I am not bound to follow other decisions. I note that s. 64(2) of the *Act* should generally be viewed within the context of the doctrine of stare decisis, which is to say that past decisions from the Residential Tenancy Branch are not to be treated as binding precedent.

Section 64(2) of the *Act* has been recently considered in *Momeni v Percy*, 2024 BCCA 77 ("*Momeni*"). The tenants in *Momeni* filed for judicial review of an arbitrator's decision granting the landlords an order of possession after their application to cancel a notice to end tenancy was dismissed.

At the Supreme Court, the reviewing justice found that arbitrator's decision was patently unreasonable because it had failed to consider a previous decision, they felt to be relevant on whether the notice to end tenancy was properly issued. The Court of Appeal set aside the decision of the reviewing justice, noting s. 64(2) of the *Act* requires an independent assessment of the issues on the evidence before the original arbitrator (para 46). In other words, the original arbitrator's failure to consider the previous was not an error.

I view the guidance from *Momeni* as providing a somewhat more expansive view of s. 64(2) of the *Act*. I find that the question of when the forwarding address was provided must be determined based on the evidence before me in keeping with s. 64(2) of the *Act*. I further note that the issue of the forwarding address was not properly before the previous arbitrator as the application was dismissed due to issues with service. I am not bound by the previous arbitrator's finding that the forwarding address was provided on December 18, 2023.

On the evidence before me, the Tenant has provided a photograph of a note taped to the rental unit door which clearly listed his forwarding address. I accept that this photograph was taken on April 20, 2023. The Tenant's evidence also contains a text message sent to the Landlord's agent on April 20, 2023, which again included the forwarding address.

I find that the Tenant provided the Landlord, specifically his agent, with his forwarding address in writing on April 20, 2023. This was done both by the note left at the residential property and by way of text message sent on April 20, 2023. The text

messages continue to indicate that the agent was communicating with the Landlord and was forwarding messages to him. Indeed, as late as June 2023, the agent says they would receive documents on behalf of the Landlord.

Though these methods of service do not strictly conform to the methods of service contemplated under s. 88 of the *Act*, I accept there was a level of friction between the parties here given how the tenancy ended. I find under s. 71(2) of the *Act* that the Landlord, through his agent, was sufficiently served with the Tenant's forwarding address on April 20, 2023.

There may have been some miscommunication between the Landlord and his agent, I do not know. However, even if there were, that is an issue to be dealt with between the Landlord and his agent and is not the Tenant's problem. The Tenant reasonably expected that communicating through the agent was acceptable, as demonstrated in the text messages provided to me.

Doubling of the Deposit

I note that the Landlord did not file to claim against the security deposit until December 29, 2023. As such, I find that the Landlord failed to claim against the security deposit within 15 days of receiving the forwarding address and his right to do so against damage to the residential property was extinguished in any event.

Accordingly, I double the Tenant's security deposit under s. 38(6) of the *Act*. I order that double the deposit, plus interest on the security deposit, be returned to the Tenant. In this case, that amount totals $1,521.53 (($750.00 x 2) + $21.53) taking the following calculation from the Residential Tenancy Branch's deposit interest calculator into account:

2020 $750.00: $0.00 interest owing (0% rate for 25.14% of year)
2021 $750.00: $0.00 interest owing (0% rate for 100.00% of year)
2022 $750.00: $0.00 interest owing (0% rate for 100.00% of year)
2023 $750.00: $14.68 interest owing (1.95% rate for 100.00% of year)
2024 $760.94: $6.85 interest owing (2.7% rate for 33.33% of year)

4) Is either party entitled to their filing fee?

I find that the Landlord was unsuccessful on his application. Accordingly, I dismiss his claim for his filing fee, without leave to reapply.

I find that the Tenant had mixed success on his claims but was overall successful given the doubling of the security deposit. Accordingly, I grant the Tenant his filing fee of $100.00 and order under s. 72(1) of the *Act* that the Landlord pay that amount to the Tenant.

Conclusion

I dismiss the Landlord's monetary claim for compensation, without leave to reapply.

I dismiss the Landlord's claim for his filing fee, without leave to reapply.

I dismiss the Tenant's monetary claim for compensation, without leave to reapply.

I order the double return of the Tenant's security deposit, plus interest on the security deposit, in the amount of $1,521.53.

I grant the Tenant his $100.00 filing fee, which shall be paid by the Landlord.

In total, I order under ss. 38, 67, and 72 of the *Act* that the Landlord pay **$1,621.53** to the Tenant ($1,521.53 + $100.00).

It is the Tenant's obligation to serve the monetary order on the Landlord. Should the Landlord fail to comply with the monetary order, it may be enforced by the Tenant at the BC Provincial 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

Residential Tenancy Branch