

## **DECISION**

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear linked applications.

The Landlord's January 9, 2024 Application for Dispute Resolution under the Act is for:

- A Monetary Order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67
- An authorization to retain all or a portion of the security deposit, under section 38
- An authorization to recover the filing fee for this application, under section 72

The Tenant's January 24, 2024 Application for Dispute Resolution under the Act is for:

- An Order for the Landlord to return the security deposit, pursuant to section 38

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

The Landlord states that they never received a Proceeding Package nor any evidence from the Tenant. The Tenant has not submitted any proof of service for their Proceeding Package and evidence.

The Landlord confirmed that they had sent the Proceeding Package and all evidence by Canada Post registered mail to the forwarding address supplied by the Tenant, and confirmed the tracking number that was submitted as proof of service. The Landlord also presented the text message where the Tenant provided their forwarding address. The Canada Post tracking site indicates that, despite attempted delivery, the package was refused by the recipient.

The Tenant cannot avoid service by failing to pick up the registered mail. I find that the Tenant was served the Proceeding Package on January 16, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The associated tracking number is listed on the cover page of this decision.

### **Preliminary Matters**

### *Should the hearing proceed without the Tenant?*

The Landlord and I were in the teleconference for a total of 55 minutes, until 2:25 PM. I checked the internal case management system the day of the hearing for any record of contact from the Tenant. I observe that the Tenant contacted the Residential Tenancy Branch on January 25, 2024, and was provided with information on the hearing date and deadlines. I also note that the Tenant's own Proceeding Package included the coordinates for this hearing. Rule of Procedure 7.8 requires the Tenant to have a representative attend the hearing and ask for an adjournment if they require one.

The Landlord was ready to proceed. In the absence of any contact from the Tenant to request an adjournment, I proceeded with the hearing as permitted by Rule 7.3.

### *Tenant's application dismissed, without leave to reapply*

The Tenant's application was seeking the return of the security deposit. The Tenant did not attend the hearing. Based on the Landlord's uncontested testimony, the Tenant did not serve the Proceeding Package for their application. As a result of the Landlord's application, I have conclusively dealt with the security deposit. Thus, I dismiss the Tenant's application without leave to reapply.

## **Issues to be Decided**

Is the Landlord entitled to compensation for damage or loss under the Act, the regulation or tenancy agreement?

Is the Landlord authorized to retain any portion of the Tenant's security deposit?

Is the Landlord entitled to recover their filing fee from the Tenant?

## **Facts and Analysis**

Based on the undisputed testimony and evidence of the Landlord, this tenancy started on July 1, 2023, with a monthly rent in the amount of \$1,300.00 due on the first day of each month, and a security deposit in the amount of \$650.00 collected on July 1, 2023.

The Landlord states that they got vacant possession from the Tenant on December 31, 2023, after obtaining an Order of Possession from a previous hearing – the file number for that hearing is noted on the cover page of this decision. On the same day, the Landlord states that they received a text message from the Tenant with the forwarding address for the return of the security deposit; a copy of this text message has been provided in the Landlord's evidence.

The Landlord admits that they failed to complete move-in and move-out condition inspection reports, as they were unaware of this requirement. However, the Landlord

did conduct a walkthrough, with video evidence to substantiate, in the presence of the Tenant at the end of the tenancy.

**Is the Landlord entitled to compensation for damage or loss under the Act, the 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

*Cleaning service for the suite - \$243.34*

I have reviewed the submitted videos during the end-of-tenancy walkthrough, filmed by the Landlords in the presence of the Tenant. The Landlords state that they had to hire suite cleaners and submitted a receipt to substantiate the claim. As discussed at the hearing, I find that the rental unit was reasonably clean as required by section 37(2)(a) of the Act with the exception of a small number of garbage bags and other small items that were left behind. According to the Landlord, they had to dispose of these garbage bags and items because the Tenant did not remove them.

**I award the Landlords \$35.00 in nominal damages** for having to remove the garbage bags and small items.

*Bathroom faucet - \$62.98*

There is no condition inspection report from the outset of the tenancy to help me determine what the state of the faucet was before the Tenant moved in. I am also unaware of how old this faucet was. Based on the testimony of the Landlords, supplemented by their video evidence, I conclude that the stopper for the faucet drain was stuck and not functioning at the end of the tenancy. The Landlords' testimony contends that the Tenant never advised them of the issue, which delayed the repair of the faucet.

Given the lack of evidence presented by the Landlord, I am unable to conclude that the Tenant was at fault for any additional loss in relation to the delayed repair of the faucet.

*Paint and putty - \$114.65*

Based on the undisputed video evidence and testimony of the Landlords, I conclude that the Tenant had an unreasonable amount of holes and damage in the drywall, which they did not fill at the end of the tenancy. This also led to the requirement of a new coat of interior paint. The Landlords state that they painted the interior of the rental unit before the Tenant moved in. The Tenant occupied the suite for six months, and Policy

Guideline #40 indicates that interior paint should last 48 months. Thus, the Tenant is responsible for 7/8 of the cost of repainting.

The Landlords submitted a receipt of the supplies required to remedy the damage to the walls, including paint and putty, in the amount of \$114.65; this is after I subtracted the faucet from this amount as it was purchased together. **Thus, I award the Landlords \$100.32 for their loss.**

*Landlord's labour for painting, drywalling, fixing faucet and oven drawer - \$60.00*

This claim is largely tied to the items above, with the exception of the oven drawer. The Landlord conducted the repairs on their own, in an effort to minimize costs. The Landlords claim \$60.00 in total; **I award nominal damages in the amount of \$30.00 for the labour of painting and drywalling.** Consistent with my findings above with respect to repair related to the faucet, I decline to award any amount for labour associated with the faucet nor the oven drawer as there is no evidence that the Tenant is responsible for these.

Based on the undisputed evidence and testimony of the Landlord, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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 Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, **in the amount of \$165.32 – the sum of all awards noted above.**

**Is the Landlord entitled to recover their filing fee 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.

**Is the Landlord authorized to retain any portion of the Tenant's security deposit?**

Under section 72 of the Act, **I allow the Landlord to retain \$265.32** out of the Tenant's security deposit of \$662.34, which is including accrued interest, in satisfaction of the monetary awards.

Accordingly, the Landlord must **return the balance of the security deposit in the amount of \$397.02 to the Tenant.**

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$397.02** under the following terms:

Monetary Issue	Granted Amount
Security deposit, including interest	\$662.34
Monetary losses incurred by the Landlords	-\$165.32
Filing fee	-\$100.00
<b>Total Amount</b>	<b>\$397.02</b>

I grant a Monetary Order to the Tenant **in the amount of \$397.02**. The Landlords must be served with **this Order** as soon as possible. Should the Landlords 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

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Residential Tenancy Branch