

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (Application) under the *Residential Tenancy Act* (Act) for:

- a Monetary Order for unpaid rent under section 67 of the Act;
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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; and
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

Landlord H.L. attended the hearing for the Landlord.

No one attended the hearing for the Tenant.

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

I find the Tenants M.R. and M.D.A. served with the Proceeding Package and evidence by registered mail on January 15, 2024, in accordance with section 89(1) of the Act. The Agent stated that the registered mail was sent to the Tenants at their forwarding address on January 12, 2024, and delivered and signed for on January 15, 2024. The Agent provided a copy of the Canada Post Customer Receipts containing the tracking numbers, copies of the completed address labels, and two RTB-55 forms to confirm this service.

No evidence was received by the Residential Tenancy Branch (Branch) from the Tenants.

I verified that the hearing information contained in the Proceeding Package was correct, and noted that the Agent had no difficulty attending the hearing using this information. As a result, the hearing proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure (Rules). The Landlord's documentary evidence was also accepted for consideration.

Issues to be Decided

Is the Landlord entitled to recover unpaid rent or utilities?

Is the Landlord entitled to compensation for damage to the rental unit or common areas?

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the amounts requested?

Is the Landlord entitled to recover the filing fee for this Application from the Tenants?

Background and Evidence

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

The Agent stated that the tenancy began on October 17, 2022, with a monthly rent of \$4,500.00, due on the first day of the month. They also stated that a \$2,250.00 security deposit was paid on October 20, 2022, which is still held in trust. The Agent stated that the tenancy ended on December 31, 2023, as the result of a decision from the Branch regarding outstanding rent.

The Agent stated that condition inspections and reports were properly completed at the start and the end of the tenancy, and that copies of the reports were provided to the Tenants as required. However, they stated that the Tenants refused to sign the move-out condition inspection report as they disagreed with it. The Agent stated that the Tenants provided their forwarding address on the move-out condition inspection report on January 1, 2024.

The Agent stated that utilities were not included in rent, as set out in the tenancy agreement, and that the Tenants were required to set up and pay for their own utilities. The Agent stated that the Tenants never set up a Fortis account, and as a result, the Landlord's son opened an account for the purpose of paying the overdue amounts, as the Tenants had never paid. The Agent stated that the Landlord is therefore seeking recovery of the \$3,103.10 paid to Fortis for the Tenants' use of gas during the tenancy.

The Agent also stated that the Tenants failed to leave the rental unit reasonably clean or to clean the carpets at the end of the Tenancy. As a result, they sought recovery of the \$577.50 paid for carpet and general suite cleaning. They also sought recovery of the \$100.00 filing fee and retention of the security deposit.

Analysis

Is the Landlord entitled to recover unpaid rent or utilities?

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. Section 46 of the Act states that if the tenancy agreement requires a tenant to pay for utilities, and the

utility charges remain unpaid more than 30 days after the tenant is given a written demand to pay them, the landlord may treat the unpaid utility charges as unpaid rent.

I have reviewed the tenancy agreement submitted and am satisfied that utilities were not included in the cost of rent. As a result, I find that the tenancy agreement required the Tenants to pay for their own utility use. Based on the Fortis bill submitted for the property, I am satisfied that the Tenants incurred \$3,103.10 in charges for gas usage between October 30, 2022, and December 27, 2023.

As there is no evidence before me to the contrary, I accept the Agent's uncontested and affirmed testimony that the Tenants never paid this amount, which was eventually paid by the Landlord's son. Finally, I am satisfied that the Application constitutes a written demand for the payment of these utilities, and as the Application was served on January 15, 2024, I find that the amounts owed constitute unpaid rent for the purpose of the Act.

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.

Based on the above, I grant the Landlord the \$3,103.10 sought for recovery of unpaid utilities pursuant to sections 26, 46(6) and 67 of the Act.

Is the Landlord entitled to compensation for damage to the rental unit or common areas?

Section 37(2) of the Act states that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean.

Residential Tenancy Policy Guideline (Guideline) 1 states that tenants are responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. It also states that tenants will generally be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

To be awarded compensation, the Landlord must therefore satisfy me on a balance of probabilities:

- that the tenants failed to comply with the Act, regulation, or tenancy agreement;
- that loss or damage has resulted from this failure to comply;
- the amount of or value of the damage or loss; and
- that they acted reasonably to minimize that damage or loss.

Based on the photographs, condition inspection reports, and the cleaning invoice before me, and the affirmed and uncontested testimony of the Agent, I am satisfied that the Tenants breached section 37(2) of the Act and Guideline 1 by failing to leave the rental unit reasonably clean at the end of the tenancy, and failing to shampoo or steam clean the carpets despite residing in the rental unit for more than a year. I am also satisfied that the Landlord mitigated their loss by having the required cleaning completed at a reasonably economic rate.

Pursuant to sections 7 and 67 of the Act, I therefore grant the Landlord the \$577.50 sought, which is the amount shown on the cleaning invoice.

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the amounts 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.

I am satisfied based on the affirmed and uncontested testimony of the Agent and the documentary evidence before me that the Tenants provided their forwarding address on January 1, 2024. As the Landlord filed their Application seeking retention of the security deposit on January 8, 2024, I find that the Landlord complied with section 38(1) of the Act. Despite this finding, I am also satisfied by the Agent's testimony that there was no requirement for the Landlord to claim against the deposit at the end of the tenancy, as the Landlord already had a Monetary Order against the Tenants in the amount of \$4,600.00 at the time the tenancy ended, which remained unpaid. As a result, I find that the Landlord was permitted under section 38(3) of the Act to withhold the entire security deposit towards that outstanding Monetary Order.

In addition to the above, I accept as fact the Agent's affirmed and uncontested testimony that the Landlord complied with the Act and regulation in terms of the move-in and move-out condition inspection reports. As a result, I find that the doubling provision set out under section 38(6) of the Act does not apply, and that the Landlord has not extinguished their right to retain the security deposit pending the outcome of this Application.

I accept as fact that the \$2,250.00 security deposit was paid on October 20, 2022, and that the tenancy ended on December 1, 2023. I also accept as fact the Agent's affirmed and uncontested testimony that the security deposit was not retained at the end of the tenancy towards the outstanding \$4,600.00 security deposit, which has not yet been paid by the Tenants or enforced in BC Small Claims Court. I therefore find that the Landlord currently holds \$2,314.91 in trust for the Tenants as a security deposit. This amount includes the \$2,250.00 initially paid and \$64.91 in interest accrued as of today's date.

As a result, and based on the above, I therefore grant the Landlord authority to withhold the \$2,314.91 security deposit and interest in partial satisfaction of the above noted amounts owed for cleaning and utilities, pursuant to section 72(2)(b) of the Act.

Is the Landlord entitled to recover the filing fee for this Application from the Tenants?

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee paid for this Application under section 72(1) of the Act.

Conclusion

Pursuant to section 72(2)(b) of the Act, I grant the Landlord authority to withhold the Tenants' \$2,314.91 security deposit and interest in partial satisfaction of the total amounts awarded.

Pursuant to section 67 of the Act, I grant the Landlord a **\$1,465.69** Monetary Order for the remaining balance owed, as set out below:

Monetary Issue	Granted Amount
recovery of unpaid rent or utilities	\$3,103.10
compensation for cleaning costs	\$577.50
Recovery of the filing fee	\$100.00
less the Tenants' security deposit and interest	-\$2,314.91
Total Amount	\$1,465.69

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, it 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 Branch under section 9.1(1) of the Act.

Dated: May 3, 2024

Residential Tenancy Branch