

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 damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

and 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)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was not served to the Tenant(s) in accordance with section 88 of the Act. The Landlord confirmed not sending evidence to the Tenants.

Issues to be Decided

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 recover the filing fee for this application from the Tenant?

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

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

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

Facts 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.

Both parties agree to the following:

- that the Tenants vacated the rental unit on December 31, 2023
- that the security deposit is \$1550.00 and is retained by the Landlord
- that the Tenants provided the Landlord with a forwarding address between January 3 and January 11, 2024.
- a Condition Inspection report was not done on move in

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

The landlord affirms that no unpaid utilities exists. However, he claims that the Tenants did not give proper notice to end tenancy as required by the Act, and therefore is asking for rent for January 2024.

The Tenants affirm sending a word document to the Landlord on November 29, 2023, along with a text message with the same information. Both were sent by Wechat. The Tenants provided screenshots of this document and the accompanying text message. Both the attached document, and the accompanying message, fit the content requirements of section 52 of the Act.

Although the Landlord raises questions regarding the form and timing of the Tenant's notice, I find them to be moot, because the copy of the tenancy agreement provided by the Tenants has a vacate clause and the fixed term ends on December 31, 2023. Both the Landlord and the Tenant initialed this clause.

As the Tenants vacated the rental unit in compliance with the requirements of the tenancy agreement, no Notice to End Tenancy was required to be served by the Tenants.

I find the Tenants vacated the rental unit in a manner that complies with the Act and the Landlord is not entitled to rent for January 2024.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

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

The Landlord affirms that, at the time the Tenants vacated, a closet door would not open properly, the washroom sink needed repairs, the dishwasher kick plate was loose, the hardwood floor was damaged, the microwave revolving plate was broken, walls were damaged and required some painting. He further claims the rental unit was not left in a reasonable condition of cleanliness. The Landlord is claiming \$2600.00 in damages and \$500.00 for cleaning.

The Tenants provided photographs of the rental unit dated December 31, 2023. They show the rental unit in a reasonably clean condition, without any obvious excessive damage.

The Tenants further affirm not causing any of the damage alleged by the Landlord.

As the Landlord did not complete a Condition Inspection Report on move in, as required by the Act, I find I cannot not determine what, if any, alleged damage was caused by the Tenants. Furthermore, as the Landlord did not provide photographs showing the alleged damages, nor repair receipts, and the Tenants' photographs do not show any damage, I find I cannot determine the existence of the alleged damages.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

The Tenants affirm they applied for this in error and due not wish to pursue any claim for damage or loss.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed without leave to reapply.

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

As the Landlord has failed in their claims for unpaid rent and for damages, I find the Tenants are entitled to the return of the entirety of their security deposit. I further find that, by not completing a Condition Inspection report on move in, the Landlord, under section 24 of the Act, extinguished their right to claim against the security deposit for damages.

For the above reasons I find the Tenant is entitled to a Monetary Order for the return of double their security deposit, **\$3,100.00**, under section 38 and 67 of the Act

Is the Tennant 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 a \$100.00 filing fee paid for this application under section 72 of the Act. However, as the Tenant filed a second application for dispute resolution that was essentially a duplicate of their first application, instead of amending their initial application, I decline to award them the second application fee.

Conclusion

The Landlord's application is dismissed without leave to reapply in its entirety.

I grant the Tenant(s) a Monetary Order in the amount of **\$3,200.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$ 3,100.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$3,200.00

The Tenant(s) is 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 22, 2024