

## **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 cross Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the return of all or a portion of their security 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

Landlord D.K., and Landlord's Sister and Agent S.K. attended the hearing for the Landlord.

Tenant P.F., Tenant's Brother and Agent M.F., Tenant's Interpreter S.A. attended the hearing for the Tenants.

For this decision, I may refer to the Tenants in the singular form.

### **Service of the Landlord's Notice of Dispute Resolution Proceeding**

I find that Tenant P.F. was served on January 15, 2024, by registered mail in accordance with section 89(1) of the Act, and deemed received on January 20, 2024, the fifth day after the registered mailing under section 90 of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant A.D. was served on January 15, 2024, by registered mail in accordance with section 89(1) of the Act, and deemed received on January 20, 2024, the fifth day after the registered mailing under section 90 of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

## **Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence**

The Landlord testified that they received the Tenant's Notice of Dispute Resolution Proceeding. The Landlord affirmed that they received the Tenant's evidence.

## **Service of the Landlord's Evidence**

The Tenant testified that they received the Landlord's evidence on April 19, April 22, April 26, and April 29 of 2024. The Tenant stated that they did not have time to review the evidence they received on April 26, and April 29 of 2024. The Tenant raised the issue that the evidence received on April 26, and April 29 of 2024 was served late.

Residential Tenancy Branch Rules of Procedure provide guidance on service of records.

Rule 3.14 states that the applicant must serve the evidence to the respondent fourteen days before the hearing.

Rule 3.15 states that the respondent must serve evidence to the applicant seven days before the hearing.

Rule 3.17 states that the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

In this case, based on the testimony of the parties, the circumstances, and on a balance of probabilities, I find that the evidence received by the Tenant on April 26, and April 29 of 2024 was more likely than not the Landlord's evidence, which was served in response to the Tenant's cross application.

Given that the hearing for both applications took place on May 6, 2024, I find that the Respondent Landlord's evidence was served in compliance with Rule 3.15.

## **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 retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

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 the cross application from the Landlord?

## **Background and Evidence**

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

The written tenancy agreement and addendum was provided showing that this fixed term tenancy began on September 15, 2023, the end date of the fixed term was scheduled for August 31, 2024. The monthly rent was \$2,300.00, due on the first day of the month, the Landlord collected and continues to hold the Tenant's security deposit in the amount of \$1,150.00. The parties agreed that the Tenant vacated the rental unit on December 30, 2023.

The second term of the written tenancy agreement's addendum reads:

*The tenant agrees to pay 1/3 of the utilities until the end of their rental term. Based on present usage is \$50/month and will be reassessed quarterly.*

The parties agreed that a condition inspection report was completed during the move in on September 14, 2023. The parties agreed that a condition inspection report was completed during the move out on December 30, 2023. The parties agreed that the Tenant provided their forwarding address in writing on December 30, 2023. A copy of the condition inspection report was provided by the parties.

## **Unpaid Rent and Unpaid Utilities**

The Landlord requested unpaid rent in the amount of \$2,300.00 for January of 2024, and unpaid utilities for the months of September of 2023 to January of 2024 in the amount of \$174.19.

The Landlord testified that they received the Tenant's notice to end tenancy on November 21, 2023. The Landlord declared they began their efforts to find a new tenancy for the rental unit beginning on November 23, 2024. The Landlord affirmed that

advertised the rental unit online and through paid advertising beginning on November 23, 2024. The Landlord's Sister, Real Estate Agent, and Agent S.K. testified that there were three showings between December 1 to December 6, of 2023. S.K. stated that there were 10 online inquiries from interested parties between November 23 of 2023 to February 1 of 2024. The Landlord testified that they successfully found a new tenant and signed a new tenancy agreement which began on February 1, 2024.

The Landlord submitted the invoices for the advertisement and showing services completed by their Real Estate Agent S.K.

In addition, the Landlord claimed that the Tenant owed utility fees for the months of September of 2023 to January of 2024. The Landlord submitted an email addressed to the Tenant dated January 4, 2024, which contained the breakdown of the utility arrears, and the utility bills for the months of September to December of 2023. The Landlord acknowledged that they did not submit the utility bills for January of 2024.

As mentioned earlier, the Tenant issued their notice to end tenancy on November 21, 2023. The Tenant stated that they experienced medical challenges and that they could no longer stay at the rental unit. The Tenant testified that the Landlord did not accept the Tenant's assistance to find a new tenant for the rental unit. The Tenant stated that they referred two potential tenants to the Landlord, but the Landlord did not sign any tenancy agreements with the referrals. Based on this, the Tenant claimed that the Landlord did not act reasonably to minimize their losses because the Tenant provided the Landlord two referrals which the Landlord did not utilize. The Landlord testified that they did attempt to contact the Tenant's referrals, but no appointments or agreements came to fruition due to no fault of the Landlord.

The Tenant raised the issue that the Landlord did not provide any evidence to show the inquiries the Landlord received while advertising the rental unit. In addition, the Tenant raised the issue that the Landlord's real estate agent was their sibling. The Landlord's Agent S.K. testified that they charged the Landlord a discounted rate for the advertising services provided.

The Tenant agreed that they are responsible for one third of the utility fees under the tenancy agreement and addendum, but the Tenant does not agree that they are responsible for the utility fees for January of 2024.

### **Compensation for Damage and Loss**

The Landlord testified that the rental unit was returned with damage and that the early end of the tenancy caused the Landlord to experience loss. The Landlord requested compensation for damage and loss in the amount of \$794.33 for the advertising services performed by the Landlord's Real Estate Agent S.K., floor repair product, cleaning product, and the Landlord's time.

The Landlord alleged that the Tenant damaged the floor in the rental unit. Specifically, that there is a chip in the kitchen flooring of the rental unit. The Landlord testified that they purchased materials to fix the flooring and clean the rental unit. The Landlord alleged that the Tenant did not return the rental unit in a reasonably clean condition as required under the Act, the written tenancy agreement and addendum.

To show the unclean condition of the rental unit, the Landlord submitted pictures of the external stairs, the kitchen floors, the patio, the kitchen cabinets, the fridge. The Landlord also submitted receipts for the products used to repair the damage and clean the rental unit. As mentioned earlier, the Landlord submitted invoices for the advertisement and showing services completed by the Landlord's Real Estate Agent S.K.

The Landlord provided an itemized monetary order worksheet to breakdown the compensation requested.

The Tenant testified that the condition inspection report does not mention the damage to the flooring in the kitchen. The Tenant stated that the kitchen floor was covered by a carpet during the tenancy which would have prevented the Tenant from damaging the flooring. The Tenant affirmed that they returned the rental unit in a reasonably clean condition at the end of the tenancy and that they believe the damage the Landlord is referring to was caused by wear and tear. The Tenant speculated that the parties may have missed the damage to the flooring during the condition inspection when they moved in.

The Tenant requested the return of the security deposit plus a doubling of the original value of the security deposit under section 38 of the Act.

## **Analysis**

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Is the Landlord entitled to a Monetary Order for unpaid rent and unpaid 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 44 of the Act provides the ways a tenancy can end under the Act.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- a) is not earlier than one month after the date the landlord receives the notice,
- b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section C of the Residential Tenancy Branch Policy Guideline #30 provides guidance consistent with the Act, which states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.

In the case of unpaid rent, based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Tenant had a responsibility to pay rent during the fixed term portion of the tenancy agreement.

While the parties have acknowledged that there is a notice to end tenancy issued by the Tenant, I find that the notice to end tenancy does not comply with 45(2) of the Act.

Under the framework of section 45 of the Act, I find that the Tenant's notice to end tenancy does not relieve the Tenant of their obligations to pay rent under the tenancy agreement. This is also supported in plain language by Policy Guideline #30.

I am satisfied that the Landlord acted reasonably to minimize their loss as soon as they were notified by the Tenant's notice to end tenancy. I assign weight to the Landlord's submissions, specifically the Landlord's receipt evidence for the rental unit listings, the real estate agent invoice, and the Landlord's recall about their efforts beginning November 23, 2024, to locate a new tenant.

I accept the Landlord's version of events which provide that the only month the Tenant did not pay rent was January of 2024.

Accordingly, I find the Landlord is entitled to a Monetary Order for January of 2024's unpaid rent in the amount of \$2,300.00 for the month of January of 2024 under section 67 of the Act.

Regarding unpaid utilities, based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord has established a claim for loss caused by the Tenant, specifically unpaid utilities under the tenancy agreement.

However, I find that the amount requested by the Landlord is not completely supported by their documentary evidence. Specifically, the Landlord has only provided utilities for the months of September to December of 2023. The Landlord did not submit January of 2024's utility bill. As a result, I find the Landlord is only entitled to compensation for unpaid utilities for the months which they were able to demonstrate the cost of the utilities.

I accept the utility bills submitted by the Landlord, and the Landlord's calculation breakdown of the utility fee arrears provided in their January 4, 2024, email message to the Tenant.

Consequently, I find the Landlord is entitled to a Monetary Order for September to December of 2023's unpaid utility fees in the amount of \$89.78 under section 67 of the Act.

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

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation
3. The value of the damages or loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The applicant must satisfy all four conditions of the four point test to be awarded compensation.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the Landlord claimed compensation for the following:

| <b>Items Claimed</b>                                   | <b>Cost</b> |
|--|-------------|
| Advertisements   | \$12.04     |
| Real Estate Agent Fees                                 | \$300.00    |
| Floor Repair Product                                   | \$21.48     |
| Cleaning Products                                      | \$40.81     |
| Seven Hours of the Landlord's Time at \$60.00 per Hour | \$420.00    |

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord is entitled to a Monetary Order for some of the items claimed. Specifically, the Advertisements and the Real Estate Agent Fees.

I find that due to the Tenant's breach of the fixed term tenancy agreement, the Landlord incurred a loss during the search for a new tenant. This satisfies the first and second condition of the four point test.

Through the Landlord's submitted receipt evidence, I am satisfied with the Landlord's evidence the value of that loss. This satisfies the third condition of the four point test.

I accept the Landlord's Real Estate Agent S.K.'s testimony that the Landlord was charged a discounted rate, I find this satisfies the fourth condition of the four point test.

Consequently, I find the Landlord is entitled to a Monetary Order in the amount of \$312.04 for the Advertisements, and the Real Estate Agent Fees. The items awarded are listed in the table below.

| <b>Items Awarded</b>   | <b>Cost</b>     |
|------------------------|-----------------|
| Advertisements         | \$12.04         |
| Real Estate Agent Fees | \$300.00        |
| <b>Total</b>           | <b>\$312.04</b> |

While the Tenant disputed the Landlord's testimony, I find that the Landlord has sufficiently addressed the Tenant's challenges and as a result I prefer the Landlord's version of the events for the items being awarded.

However, based on the picture evidence, the testimony of the parties, and on a balance of probabilities, I find that the Landlord is not entitled compensation for the Floor Repair Product, the Cleaning Products and the Landlord's Time.

I have examined the Landlord's picture evidence of the damage to the floors and the Landlord's picture evidence showing the condition of the rental unit, and I find that the rental unit was more likely than not returned to the Landlord in a reasonably clean condition barring wear and tear.

Moreover, I find the Landlord has not submitted any evidence to clearly demonstrate that the flooring was not caused by wear and tear, or that the Tenant directly caused the damage.

Lastly, I find the Landlord has not submitted any evidence to demonstrate how they calculated the cost of the Landlord's time for cleaning the rental unit. The Landlord did not submit any estimates from cleaning services, or any documents to show that seven hours of cleaning was required to clean the rental unit. In addition, I find that the hourly rate the Landlord's assigned for their time to be part of the cost of doing business as a landlord, and in this case excessive.

Based on the above, I decline to award the Landlord compensation for these items being claimed.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?**

As found above, the Landlord was granted a Monetary Order in the amount of \$2,701.82.

Under section 72 of the Act, I authorize the Landlord to retain the Tenant's \$1,150.00 security deposit plus interest in the amount of \$18.17 in partial satisfaction of the



Monetary Award. The security deposit combined with the interest accumulated equals \$1,168.17.

**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 the Landlord is entitled to recover the \$100.00 filing fee for this application from the Tenant.

**Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

Section 38(6) of the Act states that if the Landlord did not comply with section 38(1) of the Act, the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the amount of the security deposit.

Given the Landlord was authorized above to retain the security deposit in satisfaction of the monetary award granted under section 72 of the Act, the only question here is whether the Tenant is entitled to a doubling of the security deposit.

As the forwarding address was provided on December 30, 2023, and the Landlord made their application on January 12, 2024, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

In this case, the parties agreed that the condition inspection report was completed during the move in and the move out. Accordingly, I find the Landlord did not extinguish their right to make a claim against the security deposit.

Based on the testimony of the parties, I find the Landlord complied with section 38(1) of the Act and as a result the Tenant is not entitled to the return of their security deposit plus double on the original amount under section 38(6).

I dismiss the Tenant's request for a Monetary Order for the return of the security deposit under section 38 of the Act, without leave to reapply.

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

As the Tenant was not successful in their application, I find the Tenant is not entitled to recover the \$100.00 filing fee for this application from the Landlord.

I dismiss the Tenant's request for the recovery of the filing fee, without leave to reapply.

## Conclusion

I grant the Landlord a Monetary Order in the amount of **\$1,633.65** under the following terms:

| Monetary Issue  | Granted Amount    |
|---|-------------------|
| a Monetary Order for unpaid rent and unpaid utilities under section 67 of the Act   | \$2,389.78        |
| a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement under section 67 of the Act                     | \$312.04          |
| authorization to retain all of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 and 72 of the Act | -\$1,168.17       |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act  | \$100.00          |
| <b>Total Amount</b>   | <b>\$1,633.65</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.

The Tenant's cross application is dismissed in it's entirety, without leave to reapply.

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