

DECISION

Introduction

This hearing dealt with 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 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

This hearing also dealt with the Landlord'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
- 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 Landlord under section 72 of the Act

The Tenant confirmed service of the Notice of Dispute Resolution Proceeding for the Landlord's application and their evidence. The Landlord confirmed service of the Notice of Dispute Resolution Proceeding for the Tenant's application and their evidence.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?

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

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

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

Background and Evidence

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 testified that this was a twelve month fixed term tenancy that began on November 1, 2023, with a monthly rent of \$4,000.00 paid on the first day of the month. The Tenant paid a security deposit of \$2,000.00. The fixed term was to end on October 31, 2024. The Tenant vacated the rental unit on November 30, 2023.

November 2023 rent - \$4,000.00

The Tenant testified the following:

- they are seeking compensation for November 2023 rent because the unit was not safe, uninhabitable, and the Landlord did not do the following repairs in the unit that they asked for:
 - toilet seat was dirty
 - carpets were dirty and smelled
 - the kitchen sink's garburator was faulty
 - bathroom sink seal needed to be replaced
 - small white panel on the wall had insects coming out of it
 - the door lock was loose

The Tenant provided the following as evidence:

- photos they took of the above items, at the start of the tenancy
- the move-in condition inspection report that shows the items that needed repair at the start of the tenancy
- the move-out condition inspection report with their comments on what repairs were still not completed when they moved out
- an email to the Landlord dated November 1, 2023, that the carpets were cleaned, but there was still a stain on the carpets
- an email to the Landlord dated November 2, 2023, listing items that needed repair

The Landlord's agent testified the following:

- all the repairs that were listed in the move-in condition inspection report were fixed
- the Tenant never expressed that the unit was uninhabitable or that it was not safe, they are using that as an excuse for breaking the lease

Move-in and Move-out Fee - \$400.00

The Tenant testified the following:

- when they signed the tenancy agreement, they were not advised that there would be a move-in and move-out fee

The Landlord's agent testified the following:

- clause 33(a) in the Tenancy Agreement states that the Tenant is responsible for the move-in and move out fee charged by the strata corporation

The Landlord provided the following as evidence:

- a copy of the Tenancy Agreement dated October 28, 2023, and signed by both parties

Liquidated Damages - \$2,100.00

The Tenant testified the following:

- the unit was not safe, uninhabitable, and the Landlord did not do the repairs that were outstanding at the beginning of the tenancy

The Landlord's agent testified the following:

- clause 34 in the Tenancy Agreement states that if the Tenant ends the fixed-term tenancy before the end of the original term, the Tenant must pay the Landlord an amount equal to half a month's rent, plus GST as liquidated damages

The Landlord provided the following as evidence:

- a copy of the Tenancy Agreement dated October 28, 2023, and signed by both parties

December 2023 and January 2024 rent - \$8,000.00

The Tenant testified the following:

- the unit was not safe, uninhabitable, and the Landlord did not do the repairs that were outstanding at the beginning of the tenancy

The Landlord's agent testified the following:

- the Tenant did not give proper notice that they were breaking their lease. They notified them on November 27, 2023, by email that they were moving out on

November 30, 2023. This caused the Landlord rent loss for the months of December 2023 and January 2024

- they made attempts to re-rent the unit right after the Tenant moved out
- they re-rented the unit on February 1, 2024

The Landlord provided the following as evidence:

- an email dated November 27, 2023, from the Tenant, advising that they would be vacating the rental unit on November 30, 2023
- the Landlord provided a copy of the fixed term Tenancy Agreement signed by both parties, with a commencement date of November 1, 2023, to October 31, 2024

Security Deposit - \$2,000.00 - The Landlord applied for dispute resolution on February 14, 2024

The following is undisputed:

- the Tenant provided their forwarding address to the Landlord on November 30, 2023
- to date, the Landlord is retaining the Tenant's full security deposit of \$2,000.00
- a move-in and move-out condition inspection report was completed and signed by both parties

The Tenant testified the following:

- they emailed the Landlord in December 2023, inquiring about their security deposit and were advised by the Landlord, that they would be retaining their deposit due to breaking their lease

Analysis

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?

To be awarded compensation for a breach of the Act, the Tenant must prove all four points in the test below:

- the Landlord 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 Tenant acted reasonably to minimize that damage or loss

The Four Point Test

The Tenant is seeking compensation for November 2023 rent in the amount of \$4,000.00 because the Landlord did not comply with section 32(1) of the act which states a Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the Tenant. The Tenant claims the unit was uninhabitable, unsafe, and repairs that they asked the Landlord to complete were not completed.

Section 7 of the Act states that a person who suffers damage or loss because their Landlord or Tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually, this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

Residential Tenancy Policy Guideline 4 states:

In general, a reasonable effort to minimize loss means taking practical and commonsense steps to prevent or minimize avoidable damage or loss. Compensation will not be awarded for damage or loss that could have been reasonably avoided.

The person claiming compensation has the burden of proving they minimized the damage or loss.

The Tenant did not provide any evidence to show that steps were taken to minimize their loss for the repairs, the unit being uninhabitable, and unsafe. The Tenant did not provide any evidence to substantiate how the unit was unsafe and uninhabitable, also in their testimony they just stated the unit was uninhabitable and unsafe but did not provide further testimony on what they meant by this. The Tenant provided as evidence photos of the items that needed to be repaired at the start of the tenancy and an email they sent to the Landlord on November 2, 2023, regarding the repairs. The Landlord testified that all the repairs that needed to be completed at the beginning of the tenancy were completed. I find that the Tenant did not provide any evidence to substantiate that the repairs were never completed. They also did not provide any evidence that any steps were made to contact the Landlord between November 2, 2023, to November 30, 2023, regarding the repairs. The photographic evidence provided by the Tenant does not depict an uninhabitable or unsafe place. The Tenant also provided in their evidence an email they sent to the Landlord on November 1, 2023, that the carpets were clean, but during the hearing, they testified that the carpets were dirty and smelled. Given the Tenant's unreliable testimony, the Tenant not providing any evidence that the repairs were still outstanding when they moved out on November 30, 2023, and the Tenant failing to provide any evidence that they made attempts to contact the Landlord about the repairs after they moved in, they have not satisfied all four points in the test above.

Furthermore, the Tenant failed to establish how they suffered a loss of one month's rent when they occupied the unit for almost the entire month.

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 Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?

Move-in and Move-out Fee - \$400.00

Section 7(f) of the Residential Tenancy Rent Regulation (the Regulation) states a Landlord may charge a Tenant a move-in or move-out fee charged by a strata corporation to the Landlord.

I find that the Tenant did not comply with section 7(f) of the Regulation. The Tenant signed the Tenancy Agreement that clearly stated in clause 33(a) that the Tenant was responsible to pay the move-in and move-out fee charged by the strata corporation.

Therefore, I find the Landlord is entitled to a Monetary Order for the move-in and move-out fee in the amount of \$400.00.

Liquidated Damages

Residential Tenancy Policy Guideline four states that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

I find the Tenant breached their fixed term tenancy agreement by providing the Landlord with a notice to end the tenancy before the end of the fixed term. The Tenant also breached section 44 of the Act. The Tenant signed the tenancy agreement that clearly stated that if the Tenant terminated the tenancy before the end of the original term, the Tenant would be held liable to pay the liquidated damages of half a month's rent, plus GST for a total of \$2,100.00.

Therefore, I find the Landlord is entitled to a Monetary Order for the liquidated damages in the amount of \$2,100.00.

December 2023 and January 2024 rent - \$8,000.00

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulation, 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:

1. is not earlier than one month after the date the Landlord receives the notice,

2. is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
3. 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.

I accept the Landlord's agent's testimony and evidence that the Tenant is responsible to pay for all of December 2023 rent and January 2024 rent for a total of \$8,000.00. The Tenant moved out of the rental unit prior to the fixed term agreement ending. The Landlord was unable to re-rent the rental unit until February 1, 2024.

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 in the amount of \$8,000.00 for the unpaid rent.

Added to the \$400.00 for the move-in and move-out fee and the \$2,100.00 for liquidated damages, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act. I grant the Landlord a total amount of \$10,500.00.

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

Section 38 allows a Landlord to retain from the Tenant's security deposit if, at the end of the tenancy, the Tenant agrees in writing that the Landlord may retain an amount to pay a liability or obligation of the Tenant. If the Tenant does not agree in writing, section 38(1) requires the Landlord to return the entire security deposit within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. If the Landlord wishes to retain all or part of the security deposit, the Landlord must make an application for dispute resolution within the 15-day time period. If the Landlord does not return the security deposit or file a claim against the Tenant within 15 days, the Landlord must pay the tenant double the amount of the security deposit.

Under section 38 of the Act, The Landlord was required to provide the Tenant their security deposit within 15 days of receiving their forwarding address or file a claim

against the security deposit within the 15 days. The consequences of the Landlord not doing so required me to double the security deposit under section 38(6)(b). The Tenant provided their forwarding address on November 30, 2023, and the Landlord made their application on February 14, 2024. I find, the Landlord did not make their application within 15 days of receiving the forward address.

Therefore, the Tenant is entitled to the return of their security deposit in the amount \$2,000.00 doubled, plus interest under section 38 of the Act, for a total amount of \$4,025.63.

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

As the Tenant was partially successful in their application, I find that the Tenant is entitled to recover the \$50.00 for the filing fee paid for their application.

Is the Landlord entitled to recover the filing fee for their application 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 their application.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$6,524.37 under the following:

Monetary Issue	Granted Amount
a Monetary Order to the Landlord for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act	\$10,500.00
A Monetary Order to the Tenant for the return of all their security deposit, plus interest under section 38 of the Act	-\$4,025.63
authorization to recover the filing fee for their application from the Landlord under section 72 of the Act	-\$50.00
authorization to recover the filing fee for their application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$6,524.37

The Landlord is provided with this Order and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 14, 2024

Residential Tenancy Branch