

## **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
- 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

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.

Based on the submissions before me, I deem that the Landlord's evidence was served to the Tenant in accordance with the Act on January 27, 2024. The Landlord provided copies of registered mail receipts and tracking numbers showing the Tenant(s) failed to collect the Proceeding Package.

## **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 served to the Tenant in accordance with section 88 of the Act. The Landlord provided copies of registered mail receipts and tracking numbers showing the Tenant(s) failed to collect the evidence.

## **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 a Monetary Order for compensation for damage or loss under the Act?**

**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 Tennant?**

**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 Tennant entitled to recover the filing fee for this application from the Landlord?**

## **Facts and Analysis**

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Both parties agree that the Tenants returned the keys to the Landlord on December 13, 2023. Although the Tenants affirm they vacated the rental unit on December 11, 2023, I find that exclusive possession was returned to the Landlord on December 13, 2023, when the keys were returned and, as such, December 13, 2023, is the date the tenancy ended.

The Landlord affirms that a Condition Inspection Report (CIR) was completed at move in, but he did not provide a copy of said report. The Tenants affirm that no CIR was done at move in.

Both parties agree that a CIR was not completed at move out. The Landlord affirms giving the Tenants an opportunity to attend, but that they did not attend. The Tenants deny getting any invitation from the Landlord to attend a CIR at move out. The Landlord did provide a copy of a text exchange, dated December 13, 2023, with the Tenants in which he states he would return the deposit after viewing the rental unit. Although the Landlord claims this in an invitation to a CIR inspection, I find that it is not, as the message does not state that he expects the Tenants to be there, nor does it provide a time to meet. Furthermore, the message immediately prior to the one the Landlord relies on, is from the Tenant, and states the keys have been left in the mailbox.

I find it most likely that a CIR was not done on move in. Furthermore, I find it most likely that the Landlord did not give the Tenants two opportunities to attend a CIR at move out as required by the Act in section 25. In addition, the Landlord did not complete the move out CIR without the Tenant as allowed under section 35 of the Act.

I find the Landlord has, per sections 24 and 36 of the Act extinguished their right to claim against the security deposit for damages.

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

The Landlord confirms that no unpaid rent exists. Therefore, 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 did not provide a Monetary Order Worksheet but did provide a receipt for the replacement of a toilet in the amount of \$589.65. He additionally provided several pictures of a toilet with a cracked base.

The Tenant affirms that the toilet had a cracked base when they move in.

As I have found a CIR was not completed at move in, nor at move out, and the Tenants affirm the damage existed when they move in, I find the Landlord has not established that the Tenants caused the damage. Therefore, I

Therefore, 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 a Monetary Order for compensation for damage or loss under the Act?**

The Landlord provided receipts for garbage removal/disposal and cleaning in the amounts of \$275.00 and \$200.00 respectively.

Both parties agree that the Tenants left furniture and belongings behind, including a box spring, a loveseat, chaise. The Landlord additionally provided video, taken after the Tenants moved out, showing them left behind.

Both parties agree that the rental unit suffered from a cockroach infestation. The Tenants affirm abandoning their furniture to avoid bringing cockroaches to their new resident. They further affirm that they tried to have the objects removed but were refused due to the object being contaminated by cockroaches.

The Landlord affirms the garbage removal/disposal is for the furniture and other things left behind by the Tenants.

I find the tenants abandoned their furniture when they vacated the rental unit, and that they had no intention to reclaim them. Therefore, I find the Landlord has established his claim for \$275.00, the cost of removing and disposing of said furniture, as well as other objects left behind.

Regarding the cleaning invoice, the Landlord affirms paying two men to do 1-1.5 hours of cleaning. When viewing the Landlord's video, it does not show a rental unit in an unreasonably unclean condition, and, in the hearing, the Landlord R.G. only refers to dirty appliances. However, the only picture provided is black and white, and shows only a bottle of juice left behind. Furthermore, as the Landlord has had to remediate cockroaches, deep cleaning would have to be done as part of that process, above and beyond that which is required by the Tenants when vacating. Therefore, I find the Landlord has not substantiated their claim for \$200.00 in cleaning fees.

I find the Landlord is entitled to a monetary order for loss under the Act, regulation or tenancy agreement under section 67 of the Act in the amount of \$275.00.

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

I find the Landlord is entitled to retain \$275.00 of the Tenants' security deposit as satisfaction of the monetary order for loss under the Act, regulation or tenancy agreement under section 67 of the Act.

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

As the Landlord was only partially 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 provided a Monetary Order Worksheet requesting the following:

Return of December 2023 rent and security deposit	\$3000.00
First month rent and security deposit at new rental unit	\$2550.00
Damaged Goods	\$5065.76
Missed Work	\$200.74
Total	\$10,817.00

All of these claims, excluding the return of the security deposit, are related to the cockroach infestation.

The Tenant affirms notifying the Landlord of the cockroaches on December 3, 2023, and that the Landlord came to the rental unit on December 4, 2023. They further affirm an exterminator came to the rental unit on December 5, 2023, to do a treatment, but that they did not allow the exterminator to enter the rental unit and do said treatments because they affirm the exterminator informed them that cockroaches would remain in their belongings.

To be awarded compensation for a breach of the Act, the tenant must prove:

- 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

I find that the Tenants have not proven the Landlord failed to comply with the Act, regulation or tenancy agreement. To the contrary, I find the Landlord acted quickly to remedy the situation and fulfilled his obligations under the Act. I further find that, by preventing the exterminator from treating the cockroaches, the Tenants failed to minimize their damages or losses.

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?**

The Tenant is entitled to the return of their security deposit, minus the \$275.00 the Landlord is being given a monetary order for, an amount of \$725.00. However, as the Landlord claimed against the Tenants' security deposit for damages in the amount of \$589.65, after his right to do so were extinguished under section 24 and 36 of the Act, I find the Tenants are entitled to a doubling of the \$589.65 portion of this \$725.00.

Therefore, the Tenants are entitled to a Monetary Order for the return of their security deposit in the amount of \$1,314.65 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 only partially successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

I grant the Tenant(s) a Monetary Order in the amount of **\$1,314.65** under the following terms:

Monetary Issue	Granted Amount
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	\$1,314.65
<b>Total Amount</b>	<b>\$1,314.65</b>

The Tenant(s) is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(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.

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

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Residential Tenancy Branch