

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 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

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

- a Monetary Order for unpaid utilities 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord confirmed that he was served with the Tenant's notice of the dispute resolution proceeding.

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Service of Evidence

I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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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 Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

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

Is the Landlord entitled to a Monetary Order for unpaid utilities?

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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain a security and/or pet damage deposit?

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

Background and Evidence

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

The evidence indicates that the tenancy began on July 4, 2021, with a monthly rent of \$2,346.00, due on the fifteenth day of the month. The Landlord received a security deposit from the Tenant in the amount of \$1,150.00.

DB said that a condition inspection was not conducted at the beginning of the tenancy, nor was a condition inspection report prepared. The Landlord agreed that a move-in inspection report was not prepared.

On August 31, 2023, the Tenant applied for dispute resolution, claiming compensation for loss under the terms of his tenancy agreement as well as the return of his security deposit. Specifically, DB claimed compensation in the amount of \$5,927.95, with respect to BC Hydro charges paid for the period spanning April 2021 through August 2023. DB argued that heat and electricity were included under the terms of the tenancy agreement but that he had failed to notice this at the outset of the tenancy. He said that he was not present when the tenancy agreement was completed by the parties.

Electricity and Heat

DB attended the hearing on behalf of his son MB. DB said that his son has a designation as a person with a disability, and that his son requires a significant amount of assistance in managing his affairs as a result of his disability. DB said that he had set up a BC Hydro utility account in his name shortly after his son moved into the rental unit. He added that he assumed that his son was responsible for payment of heat and

electricity as his son had been responsible for these under a previous tenancy. The Tenant sought reimbursement of utility bills that had been paid but which ought to have been included in his rent.

Strata Charges

The Tenant also sought the return of \$800.00 worth of his security deposit. DB conceded that the Landlord was entitled to \$150.00 with respect to a move in fee that the Landlord had paid on the Tenant's behalf. DB conceded that the Landlord was also entitled to \$200.00 as a result of a fine that had been imposed upon the Landlord for damage that had occurred to the walls of the common property during the course of the Tenants move.

On September 5, 2023, the Landlord applied for dispute resolution, claiming compensation for unpaid utilities as well as compensation for damage to the rental unit. The Landlord also sought to retain the Tenant's security deposit.

Specifically, the Landlord sought compensation and relation to strata charges levied against the rental unit, utility charges levied by the City of Richmond, as well as expenses incurred in relation to the following:

- Floor damage and repair
- Wall damage and paint
- Toilet damage and repair
- Hanging Drape installation fees

Electricity and Heat

The Landlord argued that the marking of the boxes related to heat and electricity on the tenancy agreement was an oversight, and provided a copy of the tenancy application that was received from the Tenant which does not indicate that electricity was included. The Landlord also indicated that when they had met with the Tenant and his girlfriend, they had informed them that utilities we're not included with the rent. The Landlord further proposed that the fact that the Tenant paid the utilities for the duration of the tenancy without objection is evidence of their acknowledgement that they were responsible for payment of utilities.

Utilities- City of Richmond

The Landlord argued that the Tenant was responsible for utilities provided by the City of Richmond for the duration of the tenancy (April 15, 2021 through August 15, 2023), and claimed they were owed compensation in the amount of \$2,636.73 as a result. The Landlord spoke of these utilities generally and was unable to identify what they were for specifically.

DB denied that the Tenant was responsible for these charges, arguing that these charges did not pertain to heat or electricity, but were for water, sewage disposal, and garbage collection, all items that were included under the terms of the tenancy agreement.

Strata Charges

The Landlord claimed that he was required to pay the strata \$483.00 with respect to the repair of walls damaged during the Tenant's unauthorized move. He added that he was required to pay an additional \$52.50 with respect to the delay in making this payment.

The tenant replied that he considered these amounts to have been addressed in the previous hearing conducted with the Residential Tenancy Branch.

Floor damage and repair

The Landlord claimed compensation in relation to what he described as major scratches in the floor that looked as though they had been filled with some sort of resin.

DB argued that there was no damage to the floor, and that the filler referenced by the Landlord is of a type commonly used during installation. DB said that the marks resulting in the use of filler were present at the beginning of, and therefore preceded his son's tenancy.

Wall damage and paint

The Landlord claimed compensation in relation to wall damage that had to be repaired and painted. The Landlord said that the damage was from holes drilled in the walls for hanging and affixing items to the walls.

The Tenant said that they understood that they were not required to paint and patch the holes in the walls which they did not consider to be excessive. DB said that they patched the holes in the walls prior to their departure, nonetheless.

Toilet damage and repair

The Landlord said that the toilet tank had a broken lid. He said that as he was unable to purchase a new lid on its own, he replaced the entire toilet at a cost of \$450.00.

The Tenant argued that there was simply a small chip in the lid of the toilet tank, that this was present when the tenancy commenced, and that replacement of the entire toilet was unnecessary.

Hanging Drape installation fees

The Landlord requested compensation in the amount of \$150.00 in relation to the rehanging of curtains in the unit. The Landlord noted that the ceiling is high in the unit.

DB explained that the drapes had been taken down for the purpose of having them professionally cleaned. They said they did not reinstall them as they understood the Landlord intended to paint the rental unit.

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:

- 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

Heat and Electricity

I find that the Tenant has established entitlement to compensation with respect to their claim for reimbursement of payments made in relation to heat and electricity. In reaching this conclusion, I have considered the terms of the tenancy agreement which encompassed heat and electricity. I have also preferred the testimony of DB and find his explanation that he independently set up payment for the utilities associated with his son's rental unit as a result of an incorrect assumption to be plausible.

In contrast, I have found the Landlord's testimony that the marking of the boxes related to heat and electricity on the tenancy agreement was an oversight to be unpersuasive. In reaching this conclusion, I also note that I have determined the Landlord's testimony to be unreliable in the context of their claim that the Tenant was responsible for utilities provided by the city of Richmond.

However, the Tenant also has a responsibility to minimize their loss. In this instance, the Tenant has claimed submitting receipts for utilities invoices paid totaling \$6,264.14 for the period spanning the entirety of the tenancy, April 2021 through August 2023. I find that the Tenant's personal circumstances have hindered his ability to detect the fact that he was not liable for heat and electricity under the tenancy agreement.

However, I further note that the invoices indicate bi-monthly usage ranging from \$222.08 to \$803.45 for an apartment consisting of two bedrooms and a den. I note that the Tenant's father had assumed responsibility for payment of the charges incurred and likely would have noticed the regular and significant spikes in usage. I find that the Tenant's duty to mitigate their loss also extends to the amount of electricity consumed.

The Tenant provided little in terms of justification for what appears to be an extravagant amount of electricity used. The Landlord suggested that his current Tenant's bi-monthly usage is in the range of \$200.00. I find that it would be unreasonable to find the Landlord responsible for the entirety of the charges incurred as the Landlord did not have an opportunity to inquire as to reason for such significant consumption and potentially dispute this. I have determined a reasonable and appropriate bi-monthly usage amount to be \$250.00.

I find that the Tenant has established entitlement to compensation in the amount of \$3,750.00, which represents \$250.00 for each of the 15 bi-monthly billing cycles that occurred during the tenancy.

Therefore, I find the Tenant is entitled to a Monetary Order for money owed under the tenancy agreement in the amount of \$3,750.00.

Is the Landlord entitled to a Monetary Order for 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.

I find that the Landlord has failed to establish that they are entitled to compensation in relation to utility charges levied by the city of Richmond. In reaching this conclusion, I note that the responsibility lies with the Landlord to prove their entitlement to the compensation claimed and that the Landlord was unable to identify what services these charges were related to. In this instance, I have preferred the evidence of the Tenant which was that the utility charges levied by the city of Richmond were likely in relation to water, sewage disposal, and garbage collection.

I find that water, sewage disposal, and garbage collection are all services that were included under the terms of the tenancy agreement.

I find that the Landlord's credibility has been significantly diminished as a result of having submitted such a significant claim for compensation despite apparently making little effort to discern what these charges are for and whether they are included under the terms of the tenancy agreement.

This aspect of the Landlord's claim is dismissed.

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

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

Floor damage and repair

I find it that the Landlord has failed to establish on a balance of probabilities that the Tenant is responsible for the damage to the floor. In reaching this conclusion, I have preferred the evidence of the Tenant, which was that the damage preceded their occupancy. I also note that as a result of the Landlord's decision not to complete in move-in inspection report, there are there was no contemporaneous record of the state of the floor at the time that the tenancy commenced.

This aspect of the Landlord's claim is dismissed.

Wall damage and paint

Residential Tenancy Branch Policy Guideline #1 provides that most Tenants will put up pictures in their unit, and that it is not considered damage and the Tenant is not responsible for filling the holes or the cost of filling the holes. The Tenant may be liable for repairing walls where there are an excessive number of nail holes, or large holes.

I find it that the Landlord has failed to establish on a balance of probabilities that the Tenant is responsible for the cost of filling the holes. In reaching this conclusion, I find that the Landlord has not established that there were an excessive number of nail holes, or large holes.

This aspect of the Landlord's claim is dismissed.

Toilet damage and repair

I find it that the Landlord has failed to establish on a balance of probabilities that the Tenant is responsible for the damage to the toilet lid. In reaching this conclusion, I have preferred the evidence of the Tenant, which was that the damage preceded their occupancy. I also note that as a result of the Landlord's decision not to complete in move-in inspection report, there are there was no contemporaneous record of the state of the toilet lid at the time that the tenancy commenced.

This aspect of the Landlord's claim is dismissed.

Hanging Drape installation fees

I find DB's explanation that the drapes were not reinstalled so as to accommodate the Landlord's intention to paint to be plausible and, in the circumstances, a reasonable course of action. As the decision not to reinstall them was made as a result of the Landlord's indication they were painting, I find the Landlord to be responsible for this decision. I further accept DB's contention that they claim for \$150.00 with respect to the hanging of drapes is an exorbitant amount for completion of this task.

This aspect of the Landlord's claim is dismissed.

Is the Landlord 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 Landlord must prove:

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

Strata charges

At the hearing, DB conceded that the Landlord was entitled to \$150.00 with respect to a move in fee that the Landlord had paid on the Tenant's behalf. DB conceded that the Landlord was also entitled to \$200.00 as a result of a fine that had been imposed upon the Landlord for damage that had occurred to the walls of the common property during the course of the Tenants move.

I find that the Landlord has established entitlement to \$350.00 in relation to strata charges levied against him as a result of the actions of the Tenant.

Therefore, I find the Landlord is entitled to a Monetary Order for money owed under the tenancy agreement in the amount of \$350.00.

The Landlord claimed that he was required to pay the strata \$483.00 with respect to the repair of walls damaged during the Tenant's unauthorized move. He added that he was required to pay an additional \$52.50 with respect to the delay in making this payment.

The tenant replied that he considered these amounts to have been addressed in the previous hearing conducted with the Residential Tenancy Branch.

I find that the landlord has established entitlement to compensation in the amount of \$535.50. In reaching this conclusion, I note that the landlord's evidence supports his claim that he was required to make these payments to the strata. I also find that these claims were not conclusively addressed in the previous Residential Tenancy Branch hearing.

The Landlord continues to hold the Tenant's security deposit of \$1,150.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$985.50 of the Tenant's security deposit in partial satisfaction of the monetary order.

Is the Landlord entitled to retain a security and/or pet damage deposit? Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Section 38(4) allows a Landlord to retain from a security and/or pet damage 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.

I find that the Tenant did not agree in writing that the Landlord could retain any part of the damage deposit.

If the Landlord does not have the Tenant's agreement in writing to retain all or a portion of the security and/or pet damage 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, the Landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

I accept the Tenant's undisputed evidence that he provided the Landlord with his forwarding address via text message on August 23, 2023.

The Landlord therefore had 15 days from August 23, 2023, or until September 7, 2023, to either repay the security deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

The Landlord applied for dispute resolution on September 5, 2023, which was within 15 days. I find that the Landlord filed a claim against the Tenant within 15 days of receiving the Tenant's forwarding address as required under section 38(1).

Under section 72 of the Act, I have allowed the Landlord to retain \$350.00 of the Tenant's security deposit.

I find that the Tenant is entitled to the balance of his \$1,150.00 security deposit, which is \$800.00 (\$1,150.00 - \$350.00).

Therefore, I find the Tenant is entitled to a Monetary Order for the return of a portion of their security deposit under section 67 of the Act, in the amount of \$800.00.

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

As the Landlord was partially successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant 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 the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$4,014.50** under the following terms:

Monetary Issue	Granted Amount
Tenant entitlement to a Monetary Order for money owed under the tenancy agreement	\$3,750.00
Tenant Security Deposit	\$1,150.00
Tenant Filing Fee	\$100.00
Landlord entitlement to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement	-\$985.50
Landlord Filing Fee	-\$100.00
Total Amount	\$4,014.50

The Tenant 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 24, 2024

Residential Tenancy Branch