Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT / MNDL-S, MNDCL-S, FFL

Introduction

This reconvened hearing dealt with Applications for Dispute Resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act) which were crossed to be heard simultaneously.

The Landlord seeks the following:

- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain all, or a portion, of the Tenant's security deposit under section 38 of the Act;
- To recover the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant seeks the following:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the Notice) under section 47 of the Act;
- A Monetary Order for compensation for damage or loss under the Act, Regulation, or tenancy agreement under section 67 of the Act;
- An order requiring the Landlord to comply with the Act, Regulation, or tenancy agreement under section 62 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

Three previous hearings dealing with these Applications took place where service of the Notice of Dispute Resolution Proceeding and the parties' evidence was addressed and found to be carried out in accordance with the Act. This Decision should be read in conjunction with the interim decisions dated November 8, 2023, February 1, 2024, and February 23, 2024.

As set out in the interim decision dated November 8, 2023, given the Tenant had vacated the rental unit before the first hearing, their request to cancel the Notice was deemed moot and was therefore dismissed without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to a compensation for damage to the rental unit?
- Is the Landlord entitled to the requested compensation for loss under the Act, Regulation, or tenancy agreement?
- Is the Landlord entitled to retain all, or a portion of the Tenant's security deposit?
- Is the Tenant entitled to the requested compensation for loss under the Act, Regulation, or tenancy agreement?
- Is the Tenant entitled to and order requiring the Landlord to comply with Act, Regulation, or tenancy agreement?
- Are either party entitled to recover the filing fee for their Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on October 1, 2022.
- The tenant vacated the rental unit on August 29, 2023.
- Rent was $2,500.00 per month due on the fifteenth day of the month throughout the tenancy.
- A security deposit of $1,250.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.

- The Tenant's forwarding address was provided to the Landlord's Agent via email on August 31, 2023, and was acknowledged as received on the same day.
- The rental unit is the upper portion of a house, with a lower suite the Landlord kept for their own use as required, though they were out of country for most of the tenancy.

The Landlord's Claim

The Landlord seeks $660.00 in cleaning costs from the Tenant. The Landlord's Agent testified that when the Tenant vacated the rental unit on August 29, 2023, the floors were not clean, the fans were not dusted, there was paint on the floor, marks on the wall and the kitchen, including the stove, had not been properly cleaned.

The back deck needed pressure washing and the windows required cleaning. $375.90 is sought for window cleaning costs. Copies of invoices for cleaning carried out at the rental unit were submitted into evidence and it was confirmed there was a typographical error on the date for the window cleaning invoice. The Landlord's Agent indicated the significant amount of the cost of cleaning was indicative of the state the rental unit was left in by the Tenant.

No condition inspection report was completed at either the start of the end of the tenancy. Several photographs were taken when the Landlord's Agent attended the rental unit on August 29, 2023, but only one was submitted into evidence, which shows the thermostat in the rental unit.

The Landlord also seeks to recover yard maintenance costs from the Tenant. It was the Tenant's ongoing responsibility to carry out yard work during the tenancy which they did not do, due to them frequently spending time away from the rental unit. Two invoices were submitted into evidence, dated August 2, 2023 for $504.00 and September 3, 2023 for $84.00. The yard had been overgrown and not maintained prior to this, though there was a trailer with remnants of yard work in.

I was referred to an undated quote entered into evidence which appears to provide the costs of $495.00 for repairing water damage to the bathroom door jamb and casing, and to remove and replace damaged MDF. The Landlord testified there was a lot of water damage in the bathroom of the rental unit, which they believe was due to the Tenant not shutting the screen properly, causing the door jamb to swell. The bathroom had been in good condition prior to the tenancy starting, and the only noteworthy damage was a

hairline crack in the sink. There were no requests for repairs relating to the bathroom from the Tenant during the tenancy. The bathroom had been newly renovated in 2007.

The Landlord's Agent testified that only one key was returned by the Tenant at the end of the tenancy on August 29, 2023. Neighbours had told the Landlord that acquaintances of the Tenant had been staying at the rental unit while the Tenant was away. As only one key was returned, the locks were changed for the safety of the Landlord. A copy of an invoice for $204.75 dated August 29, 2023 was entered into evidence which appears to show four doors at the rental unit were re-keyed.

The Landlord referred me to statements of the neighbours entered into evidence which appear to set out that the Tenant had guests throughout the tenancy. The Landlord also testified the Tenant's niece had guests who were coming and going from the rental unit while the Landlord was staying in the lower suite at the residential property. Further, the Tenant's ex-wife entered the property when the Tenant was not there, so they believe copies of keys were made.

The Landlord testified that the oven, which was bought about 12 years ago, required repair after the Tenant vacated the renal unit. The person who repaired the appliance stated the oven had been left on and used excessively and burnt out. A copy of an invoice for $194.25 for the repair of the oven dated August 31, 2023 was entered into evidence which appears to list the problem as "light comes on when you open the door, no heat".

The Landlord seeks $179.18 to replace stools in the rental unit. The Landlord's Agent testified the Tenant damaged the stools during the tenancy and argued that given the tenancy was relatively short, it was unlikely that wear and tear alone would have occurred during this period. The Landlord testified the white leather of the stools had become worn by the end of the tenancy. The stools were around 8 years old but were "pristine" at the start of the tenancy and they would not have started the tenancy with worn furniture.

The Landlord testified they did not do a walkthrough as the Tenant wanted to do this themselves and though they had photographs of the rental unit taken September 9, 2022, they were not entered into evidence.

The Landlord's Agent submitted the Tenant was responsible for notifying of any issues with appliances within the rental unit, including the hot water tank. The Landlord testified they arrived at the rental unit around July 12, 2023, and noticed the hot water tank in the

utility room, which was installed around 10 years ago, was rusted and had mould in the drip tray. This was concerning to the Landlord, and they appeared to be of the opinion the tank could have blown due to its state. The tank was ultimately replaced and an invoice for $1,510.32 was entered into evidence.

The Landlord's Agent testified they were retained by the Landlord to deal with the issuing of the Notice following the breakdown of the relationship between the Tenant and the Landlord. A copy of the Notice was entered into evidence, which is signed July 28, 2023 and has an effective date of August 31, 2023. The Tenant disputed the Notice, though on or around August 19, 2023, the Tenant emailed the Landlord's Agent, providing 10 days' notice to end the tenancy. The Landlord's Agent acknowledged receipt of the Tenant's notice to end tenancy, and informed the Tenant they did not believe there was such notice period available for them to give.

The chance to re-rent the rental unit for September 2023 was missed, and the Landlord's Agent submitted that given the location of the rental unit, the prospect of finding a new tenant from October onwards was difficult. The Landlord's Agent testified the rental unit was listed on September 8, 2023. A record of a listing dated September 28, 2023 was submitted into evidence by the Tenant.

The Landlord seeks to recover three months of lost rental income from the Tenant as by disputing the Notice, they retained the right the occupy the rental unit until the hearing schedule for November 23, 2023 where the validity of the Notice would be dealt with, then provided insufficient notice to end the tenancy prior to the hearing. The Landlord testified they expected the Tenant to still occupy the rental unit until the hearing given, they disputed the Notice.

The Tenant testified as follows. They cleaned the rental unit diligently, including the windows, before they vacated and took a video showing the condition, which was submitted into evidence. They stated the rental unit was in great condition both at the start and the end of the tenancy.

Counsel submitted they were never provided with any photographs of the rental unit at the end of the tenancy, though noted the photographs were not submitted into evidence in any case. Counsel submitted the video submitted into evidence speaks for itself in terms of the cleanliness of the rental unit.

I was referred to photographs taken before and after yard maintenance was carried out by the Tenant, per counsel, as well as sections of the 11 minute video showing the yard

and the rental unit as a whole. The Tenant testified the photos were all taken at the end of June 2023. They borrowed equipment from the neighbour and took three days to clear the yard, sent photos to the Landlord ahead of their arrival back at the rental unit in July 2023, when they moved into the lower suite at the residential property.

The Tenant stated the Landlord would previously get hired help to maintain the lawn, and they believed they were the first tenant to take on the responsibility in this regard. They also disputed the tenancy agreement provided they are responsible for yard work and in any case, there was no lawn mower or other equipment to carry out maintenance.

Counsel submitted the yard work was carried out before the Tenant vacated the rental unit and there was still 27 days when the work could have been tended to but the Tenant. Further, the video taken August 29, 2023 shows the yard in a reasonable condition.

Counsel submitted the videos provided into evidence by the Tenant show the condition of the bathroom at the end of the tenancy. Also, the condition of the bathroom at the start of the tenancy was not clearly set out in the Landlord's evidence, and in any event the value of the bathroom would depreciate over time.

The Tenant testified they were given one set of keys for the main door, shed and for the lower portion of the property to access laundry services and that they did not make any copies. They also stated only their niece stayed at the rental unit while they were away, and this was only during the time the Landlord lived in the slower suite. The Tenant's ex-wife had keys to their vehicle, where they left the keys to the rental unit, so their ex-wife gained access to the rental unit that way during an evacuation period during a fire in the region.

Counsel submitted the Tenant notified the Landlord that the oven was not working on August 10, 2023 after they were unable to cook a pizza, and asked for repairs to be carried out. Counsel submitted that the appliance is the Landlord's responsibility to repair and the oven not functioning was not due to Tenant.

Counsel referred me to videos submitted into evidence by the Tenant and acknowledged there were some fine cracks in the leather, which was wear and tear which the Tenant was not responsible for, and that the cracks do not appear to be deliberately made and the Landlord's allegations are based on speculation.

Counsel submitted that given the age of the tank, where the Tenant to be compensating the Landlord for the entire costs of a replacement, which would lead to betterment for the Landlord.

The Tenant testified they had fitted similar tanks and submitted the drip pan was designed to collect water and there was no risk or danger in having half an inch of water in the pan.

Counsel for the Tenant submitted the Tenant's position was that the Notice should have been a Two Month Notice to End Tenancy for Landlord's Use of Property, and so 10 days' notice was provided by the Tenant, and to prevent any claims of abandonment.

The Tenant's Claim

Counsel for the Tenant submitted as follows. Around May 2023, the parties had discussed extending the tenancy into 2024, but there had also been discussions about the Tenant purchasing the residential property, or the Landlord living in rental unit themselves. Once the Landlord's Agent became involved, they indicated to the Tenant the Landlord intended on moving back to the rental unit. The Landlord also confirmed in July 2023 to the Tenant they would be served two months' notice as required under the Act, but this was never issued to the Tenant.

The Tenant did not receive one month's rent in compensation as required under section 51(1) of the Act, and instead was served the Notice under section 47 of the Act for cause. No warnings were given to the Tenant regarding any of the reasons for ending the tenancy provided on the Notice.

The Notice was issued July 28, 2023 and by this time the Landlord was living in the suite below the rental unit, and the Tenant was faced with the prospect of breaches of privacy due to the close proximity of the parties.

As no condition inspection report was prepared at the start, or end, of the tenancy the Landlord's right to claim against the Tenant's security deposit has been forfeited. The Tenant's forwarding address was provided in writing on August 31, 2023 to the Landlord's Agent and though the Landlord's Application was made within the fifteen day timeframe, as the Landlord's rights to claim against the deposit have been lost per section 38(5) of the Act, the Tenant claims the return of the security deposit, plus interest, plus double the deposit.

The Tenant also claims for loss of quiet enjoyment by the Landlord requiring written approval before guests could stay, interfering with guests while they stayed at the rental unit, restricting services and gaining unauthorized access during a non-emergency situation.

During the tenancy the Landlord asserted that the addendum restricting guests overrode section 30 of the Act, which is of no effect, per section 5 of the Act and is subject to a fine of up to $5,000.00. The Landlord intentionally turned off breakers multiple times including when the Tenant's nieces were staying.

The Landlord also entered the rental unit to turn off lights, fans, and the air conditioner, and did so under the pretense that halogen lights being left on were an emergency. The Landlord also slandered the Tenant to neighbours and family members and caused the Tenant to be in a state of constant stress from early July 2023, when the Landlord took occupancy of the lower suite.

The Tenant claims aggravated damages of $5,000.00 for loss for quiet enjoyment between May 2023 and September 2023, and for the addendum being non-compliant with the Act and was imposed on the Tenant after they took occupancy of the rental unit.

The Landlord testified as follows. The addendum does not restrict guests, just requires the Tenant to be present while they are at the rental unit. The Landlord disputed approaching or interfering with the guest's use of the rental unit at any stage.

The air conditioner was left running by the Tenant for hours while they were away from the rental unit and as it is a portable unit, intended for small spaces, it had a tenancy to overheat and during a period of forest fires burning in the region, the Landlord went into the rental unit to turn it off.

The Landlord disputed they cut of electricity to the rental unit at any stage and stated Tenant caused a fuse to blow when they had family stay in a trailer, with power hooked up to the rental unit. When they were notified the power had gone down when the Tenant's nieces were staying, they were not at the rental unit but returned to flip the switch back and restore power.

The Landlord testified the parties decided to go on a month-to-month basis as this suited them. The Tenant had said in April 2023 via text message they would only move if they were going to buy a property, and whilst the Landlord said they knew a family

who wanted to rent the rental unit, they wanted a year lease, which did not suite the Landlord.

When they returned to live in the lower suite in July 2023, the parties were initially on friendly terms, but after noticing weeds growing in the yard and the leak in the water tank not being reported, they discussed the Tenant leaving and the Landlord stated they knew of a lakefront property they could move into, which the Tenant viewed and thanked the Landlord for. The Landlord stated from July 18, 2023, the relationship further deteriorated, and the Tenant sent frequent emails and text messages with personal remarks which were reported to the police, and they appointed their Agent to deal with the tenancy on their behalf.

In August 2023, the Landlord found out via their Agent the oven had broken and they offered to have an electrician attend to issue, but the Tenant declined, saying they did not want anyone entering the house.

During the fires, they were on alert for a potential evacuation and as the lights were left on while the Tenant was not at the rental unit, the Landlord stated they got permission from the fire department to enter and turn them off. They stated the halogen lights set into the cabinet got hot and were a hazard. At this point the Tenant had moved most of their belongings out of the rental unit after giving notice to end the tenancy.

In response to the Landlord's testimony, the Tenant stated that trust in the Landlord had eroded, so they did deny access to the rental unit to fix the oven and acknowledged they left a "couple" of lights on while they were out of the province.

Analysis

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. 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.

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does not comply with the Act, the Regulation, or the tenancy agreement, the non-complying

party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their loss.

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.

Landlord's Claim for Damage to the Rental Unit and Cleaning Costs

The Landlord seeks compensation from the Tenant for a range of alleged breaches of the Act relating to damage of the rental unit and the level of cleanliness of the rental unit at the end of the tenancy.

Section 32 of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant. Additionally, section 37 of the Act sets out that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

For the purposes of a landlord's claim, not only is the condition of the rental unit at the end of the tenancy of relevance, but when it comes to assessing any alleged damage to the rental unit, the condition at the start of the tenancy is also of importance as this allows for the scope and nature of any purported damage during the tenancy to be determined.

A tenant is only responsible for damage caused by them, and not for wear and tear, and it is for the Landlord to prove on a balance of probabilities any damage was caused by the Tenant as a starting point for their claims relating to damage to the rental unit. In order to be successful in their claim for cleaning costs, the Landlord must prove the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy.

It was undisputed there was no condition inspection report made either at the start or the end of the tenancy. As set out in section 21 of the Regulation, a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Besides the conflicting testimony of the parties which I find were equally plausible as one another, the only other evidence carrying any weight which spoke to the state of the

rental unit at any stage of the tenancy was the video evidence of the Tenant, which was recorded at the end of the tenancy.

The Tenant disputed all allegations that the damage in question was caused by them during the tenancy. Without the benefit of an inspection report or any other evidence to indicate the condition of the rental unit at the start of the tenancy, I find the Landlord has failed to establish their claims for damage to the bathroom and stools, and they are dismissed without leave to reapply as a result.

In the case of the claim for damage to the oven, the parties agreed that around August 10, 2023 the Tenant reported the oven as broken to the Landlord's Agent, who then relayed the message to the Landlord. Though the Landlord took the position that the appliance repair technician stated the oven broke due overuse, I find there is no evidence to corroborate this, and the invoice makes no mention of the cause of the fault. Given this, and the age of the appliance, I find on a balance of probabilities the repair costs were incurred due to wear and tear rather than by any act of omission of the Tenant. I therefore dismiss without leave to reapply the Landlord's request to recover the oven repair costs from the Tenant.

The Landlord alleges the Tenant failed to report a fault with the hot water tank where the drip tray filled, causing the tank to rust, and required replacing. Per the letter from the mechanical contractor who replaced the boiler, it would have been leaking "…for a while, probably a month or more…". It was also confirmed by the Landlord that the tank was around ten years old. Given this, and that it was undisputed the tank was leaking, causing rust to develop, and the previsions of Policy Guideline 40 - Useful Life of Building Elements, which sets out that the useful life of domestic hot water tanks is ten years, I find the replacement of the tank was necessitated by it reaching the end of its useful life, rather than by the Tenant. The Landlord's claim is therefore dismissed without leave to reapply.

The parties provided conflicting testimony regarding the cleanliness of the rental unit at the end of the tenancy, again which I found were as plausible as one another. However, I find the video footage of the Tenant's corroborates their position that the rental unit was reasonably clean at the end of the tenancy and I find the Landlord has failed to prove on a balance of probabilities the Tenant breached section 37 of the Act. Their claim to recover cleaning costs from the Tenant is dismissed without leave to reapply.

It was undisputed by the parties that the tenancy agreement required the Tenant to carry out yard work at the rental unit. The addendum provides that lawns are to be maintained to an "acceptable appearance". I found insufficient evidence to indicate on a

balance of probabilities that the Tenant was in breach of their duties and should therefore be responsible for the costs claimed by the Landlord.

The parties provided conflicting testimony as to the condition of the yard during, and at the end of the tenancy. The Tenant also provided corroborating evidence to support their testimony, namely photographs and video footage. I find the evidence of the Tenant carries significant weight and establishes they met their duties, per the tenancy agreement. I therefore dismiss the Landlord's claim without leave to reapply.

Section 37(2)(b) of the Act requires a tenant to give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property when they vacate the rental unit.

It was undisputed by the parties that parties other than the Tenant had accessed the rental unit while the Tenant was away from the rental unit. Though the Tenant testified that the key to the rental unit had not been copied, and the original key had been left in their truck for others to gain access to the rental unit, I did not find this testimony to be plausible and find the Tenant breached section 37(2)(b) of the Act. I find the costs of replacing the locks are reasonable and award the Landlord a monetary order under section 67 of the Act for $204.75.

Landlord's Claim for Unpaid Rent

The Landlord seeks three months in unpaid rent totalling $7,500.00. It was undisputed the Tenant provided notice to end the tenancy on or around August 19, 2023, to end the tenancy on August 31, 2023, though they vacated the rental unit on August 29, 2023.

I find at this stage of the tenancy, it was on a month-to-month basis. Though the tenancy agreement provides for a fixed term of "9 months" which, apparently due to an error also ends on October 1, 2022, the day the tenancy starts, per the tenancy agreement, the nine month term had been reached and passed by this point in any case and the parties appeared to have accepted the tenancy was a periodic one.

The Landlord issued the Notice for cause under section 47 of the Act on July 28, 2023, with an effective date of August 31, 2023, which was disputed by the Tenant and a hearing was set for November 7, 2023. When a tenant disputes a Notice to End Tenancy, its validity is suspended, pending the hearing, where the landlord will have to prove on a balance of probabilities their reasons for ending the tenancy, per rule 6.6 of the *Rules of Procedure*.

I find the Tenant, whilst they had disputed the Notice, as they were entitled to do, was also able to end the tenancy before the hearing on November 7, 2023, though the required notice period of at least a month would still be required, as set out in section 45 of the Act. I find the Landlord was entitled to rely on the notion the tenancy would continue until a decision was rendered following the November 7, 2023 hearing, or if the Tenant gave notice to end the tenancy before then. A tenant may give ten days' written notice to end a tenancy only if a Notice to End Tenancy under sections 49, 49.1 or 49.2 of the Act, as stated in section 50(1)(a) of the Act.

Given the above, I find that the Tenant was not entitled to end the tenancy effective August 31, 2023 with the notice given on or around August 19, 2023 and at least a month's notice was required. Per section 53 of the Act, incorrect effective dates are automatically corrected, and in this case, as rent was due on the fifteenth day of the month the earliest the Tenant could have ended this tenancy was October 14, 2023, and therefore rent due September 15, 2023 was due under section 26 of the Act.

I find the Landlord has therefore established their claim for unpaid rent, though I am not inclined to award the full three months of rent requested. As previously noted, I find this tenancy was on a month-to-month basis when notice to end the tenancy was given and the Tenant was entitled to end the tenancy with a month's notice on the day before rent is payable, per section 45 of the Act. Were this a fixed-term tenancy with at least three months left before the end of the term, the Landlord may have been entitled to more than a month's rent, but this is not the case here.

Based on the above, I find the Landlord is entitled to a monetary order for $2,500.00 for unpaid rent under sections 26 and 67 of the Act.

Tenant's Claim for Loss of Quiet Enjoyment and Breach of the Act, and for the Landlord to Comply with the Act, Regulation or Tenancy Agreement

The Tenant seeks aggravated damages of $5,000.00 from the Landlord for alleged beached of the Act, loss of quiet enjoyment, and restriction of services, namely electricity to the rental unit and a working oven.

Counsel for the Tenant argued the addendum of the tenancy agreement was inconsistent with the Act, particularly the term at paragraph 15 which appears to be an attempt to restrict guests and reads "NO SUBLETTING of any kind. No one other than the tenant on the lease is permitted to be on the premises". The Landlord took the position that guests were allowed at the rental unit, but the Tenant had to be present

too. Counsel also argued the terms of addendum was, in effect, forced on the Tenant as they were asked to sign it after they took occupancy of the rental unit.

Section 14 of the Act provides that any changes to a tenancy agreement can be made, only with the agreement of the landlord and the tenant. Given this, I find the Tenant had the option to not sign the addendum, and the terms would not have come into force. Those terms which are inconsistent with the Act are not enforceable in any case, per section 6 of the Act.

I find that paragraph 15 of the addendum, which does appear to be an attempt to restrict guests, would be unenforceable in this case, though I found insufficient evidence of loss on the Tenant's part relating to the attempt to avoid the Act from the Landlord. Simply having a term in a tenancy agreement inconsistent with the Act does not automatically give rise to compensation for a tenant, and sections 5 and 6 of the Act provide a protective remedy, ensuring such a term is of no effect.

I find the Tenant failed to establish they are entitled to compensation for restriction of services provided under the tenancy agreement. There appeared to be isolated cases where the electricity was cut off and the oven was inoperable towards the end of the tenancy, however based on the evidence before me, I find the electricity was cut off due to a tripped fuse and beyond speculation on the Tenant's part nothing before me indicated the Landlord deliberately restricted the electricity supply. Per the Tenant's testimony, they refused access the rental unit to have the oven repaired so have failed to mitigate this loss. Given this, I make no monetary award to the Tenant for restriction of services.

I also found insufficient evidence to indicate on a balance of probabilities the Landlord interfered with the Tenant's right to quiet enjoyment during the tenancy which is set out at section 28 of the Act. It was undisputed the Landlord entered the rental unit without permission on August 26, 2023 while the Tenant, to turn lights off. It was undisputed there were fires active in the region at the time and I find it reasonable for the Landlord to gain access in an attempt to preserve the safety of the residential property. Aside from this, I find this is a minor issue from which no compensation flows, let alone aggravated damages.

The Tenant also took the position that the Notice, issued under section 47 of cause, should have been issued under section 49 of the Act for landlord's use of property. The various types of notices to end tenancy a landlord can issue, which are set out in the act

from sections 46 to 49.1 of the Act and serve distinct and separate purposes and are not interchangeable.

Whilst I find there were discussions between the parties about the Landlord moving back into the rental unit, there was also exchanges regarding the Tenant moving to another property, or the Tenant purchasing the residential property themselves. I am not prepared to amend the Notice for a Two Month Notice to End Tenancy for Landlord's Use of Property and the entitle the Tenant to one month's rent under section 51(1) of the Act as I find this would be outside of my discretion as an arbitrator. Were the Tenant to believes that there was no justification behind the Notice, they had the option to dispute the Notice, as they did, and continue the tenancy until the hearing where the validity of the Notice would have been address and dealt.

Based on the above, the Tenant's requests for compensation under section 67 of the Act, and for the Landlord to comply with the Act, Regulation or tenancy agreement under section 62 of the Act are dismissed without leave to reapply.

Security Deposit

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

Sections 24 and 36 of the Act also state that a landlord's right to claim against the security deposit for damage to the residential property is extinguished if they do not provide two opportunities to inspect the rental unit at the start and end of the tenancy and prepare a condition report in accordance with the Regulation.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find the Landlord has adhered to the timeframe set out in section 38(1) of the Act in this case as the Tenant's forwarding address in writing was provided on August 31, 2023, and acknowledged as received the same day by the Landlord's Agent. The Landlord's Application was submitted on September 14, 2023, within the fifteen day timeframe. Regardless, the Tenant was not entitled to end the tenancy before October 14, 2023, as previously set out in this Decision.

It was undisputed that the Landlord had not adhered to sections 23 or 35 of the Act as they failed to prepare a condition inspection report at either the start or the end of the tenancy. The Tenant took the position that the doubling provisions of section 38(6) of the Act therefore apply, as the Landlord had forfeited their right to claim against the security deposit.

I find the Landlord has extinguished their right to claim against the security deposit, but only in respect to damages. The wording of sections 24(2) and 36(2) of the Act refer to only the right to claim for damage to residential property being extinguished. It follows that the Landlord retains the right to claim for other losses, such as unpaid rent, as the Landlord has done in this case. I find the doubling provisions of section 38(6) of the Act therefore do not apply, given the Landlord was entitled to claim against the security deposit for unpaid rent.

As previously addressed in this Decision, the Landlord was awarded a payment order which exceeds the security deposit, plus interest. Given this, I authorize the Landlord to retain the Tenant's security deposit, plus interest, in partial satisfaction of the payment order under section 72(2)(b) of the Act.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as $39.34 using the Residential Tenancy Branch interest calculator using today's date.

Filing Fees

As the Tenant's Application was not successful, they must bear the cost of the filing fee. As the Landlord has been at least partially successful in their Application, I order the Tenant to pay the Landlord the amount of $100.00 in respect of the filing fee in accordance with section 72 of the Act.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord's Application is granted in part.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Unpaid rent	$2,500.00
Changing locks	$204.75
Filing fee	$100.00
Less: security deposit, plus interest	($1,289.34)
Total	**$1,515.41**

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: June 7, 2024

Residential Tenancy Branch