

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 damage to the rental unit or common areas under sections 32 and 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 cross-application for:

- compensation for overpayment of utilities under section 67 of the Act
- the return of the Security and Pet Damage Deposits under section 38 of the Act
- authorization to recover their filing fee under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties each acknowledged receipt of evidence from the other party by email and agreed that they commonly communicate through email. Each party submitted a copy of the outgoing email containing the required attachments to confirm service. Under section 71(2)(c) of the Act, I find sufficient service of the Proceeding Package and evidence upon each party.

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

Which party is entitled to retain the Tenant's security and pet deposits?

Is either party entitled to recover their filing fee for this application?

Background and Evidence

Evidence was provided showing that this tenancy began on April 1, 2019, with a monthly rent of \$2,244.00, due on the first day of the month, with a security deposit in the amount of \$1,100.00, and a pet deposit in the amount of \$1,100.00. Interest of \$68.56 has accrued on the deposits to the date of the hearing. The Landlord still holds the deposits.

End of tenancy

The last rent payment from the Tenant was for the month of January 2024. The parties agree the tenancy ended by January 31, 2024, by that time the unauthorized sub-tenant had vacated the rental unit.

The Tenant submitted a copy of emails between the parties dated December 12, 2023, where the parties agreed to end the tenancy effective January 31, 2024.

The Tenant provided their forwarding address to the Landlord via email on February 2, 2024. The Landlord applied for compensation and to retain the deposit on February 14, 2024.

Inspections

The rental unit was built in approximately 2017. The parties did not complete a move in inspection of the rental unit.

Section d of the addendum to the tenancy agreement provides that the Tenant is deemed to find the rental unit in good condition at the outset of the tenancy if they do not specifically notify the Landlord of any defects in writing prior to taking possession of the unit.

The Landlord took video of the upstairs of the rental unit, and provided that to the Tenant as a virtual showing of the unit prior to the tenancy. The Tenant was not provided video or photos of the downstairs prior to the tenancy. The Tenant says it was not possible to determine the condition of a few items in the video because they were covered by the previous tenant's possessions.

The Landlord has not provided photos or reports to indicate the state of the rental unit prior to the commencement of the tenancy.

The parties did not complete a move out inspection. The Tenant declined to participate in a move out inspection because they did not believe it was necessary since they had not completed an inspection at move in.

The Landlord did not provide evidence that they served a Form 22 Final Notice of Inspection to the Tenant. The Landlord did not complete a move out inspection report without the Tenant.

The Landlord took photos of the rental unit and provided them in evidence to show the state of the rental unit at the end of the tenancy.

Damages and cleaning

The Landlord provided receipts and a list of expenses for cleaning, replacing light bulbs, and repairing the unit, totalling, \$3,631.00. Of those expenses, the receipt for carpet cleaning shows the total \$236.25. The invoice for the time required to complete repairs lists the hours of labour for the Landlord and their child to clean and repair the rental unit.

The Tenant says they cleaned the unit and the carpets and any damage in the unit was pre-existing or wear and tear. The Tenant did not provide evidence that they steam cleaned or shampooed the carpets.

The Tenant says the appliances in the rental unit were not on rollers and no instructions to safely move them were provided.

The Tenant says some of the damage listed in the Landlord's claim is still visible to date, such as the damage to the blinds although the Tenant notes the Landlord's invoice includes charges for their labor to install and repair blinds.

Utilities

During the tenancy, the Tenant was required to put utilities into their own name. The Tenant was not initially aware they were paying utilities for an outbuilding they did not occupy in addition to the utilities for their rental unit.

The Tenant describes the outbuilding as a detached shop with a bathroom. The Tenant believes the additional cost of utilities is between \$100.00 to \$200.00 per month since January 2021. The Landlord disagrees, estimating the cost closer to \$50.00 to \$100.00 per month. The email from the Landlord to the Tenant dated December 12, 2023, indicates the Landlord reduced the rent by \$200.00 when the tenancy agreement was filled out to account for the cost of the utilities. The Tenant disagrees with this statement.

Analysis

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

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

The Landlord has requested one month's rent. Presumably the Landlord requests rent for February 2024 because they were unable to re-rent the unit until March 1, 2024.

Based on the emails in evidence I find the parties mutually agreed to end the tenancy on January 31, 2024. Even if there was no mutual agreement, I find the email from the Tenant dated December 12, 2023, provides sufficient notice to end the tenancy by January 31, 2024.

I find the damages attested to by the Landlord are all minor in nature and would not make the unit uninhabitable for the month of February. I find the Landlord reasonably could have advertised the unit for rent in December 2023 to find a replacement tenant sooner. Therefore, I find the Landlord failed to mitigate any loss of rental income.

I decline to award one month's rent to the Landlord.

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

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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

Damages to unit

Section 21 of the regulations says:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Given the lack of inspection reports in this matter and the Tenant's dispute of the damages to the rental unit, I find the Landlord is required to provide a preponderance of evidence to establish their claim for damages.

I find the screenshots of the video taken of the rental unit prior to the tenancy do not show a before picture of the items the Landlord claims to be damaged. I find the screenshots support the Tenant's position.

I find the Landlord has not submitted documentary evidence of the state of the rental unit prior to the tenancy. Therefore, I find I cannot determine whether the damages claimed were caused by the Tenant during their tenancy.

According to Policy Guideline 1, I find the Tenant is responsible for replacing light bulbs during the tenancy. I find the cost of replacing lightbulbs at the end of the tenancy falls to the Landlord because a burnt-out bulb is not damaged and is merely the result of use, which qualifies as "wear and tear."

Under Policy Guideline 1, the Landlord is responsible for smoke detectors.

I decline to award compensation for all other damages to the rental unit claimed by the Landlord.

Cost of labour for repairs and cleaning

Under section 37 of the Act, the Tenant is required to leave the unit in a reasonable state of cleanliness. I find the photographs of the unit at the end of the tenancy indicate reasonable cleanliness. Furthermore, I accept the Tenant's testimony that the appliances were not on rollers, and they were not instructed how to safely move them. So, according to Policy Guideline 1, I find the Tenant was not required to clean behind the appliances.

The Landlord's company's invoice for labour for repairs and cleaning includes their own hours and hours of labour for their child. I find the Landlord has not presented evidence they actually paid their child for their time, and even if they paid themselves, I find this does not establish a monetary loss for the Landlord.

Carpet cleaning

It is not disputed that the Tenant had a pet. Under Policy Guideline 1, regardless of the length of a tenancy, when a Tenant has a pet, the Tenant may be expected to steam clean or shampoo the carpets at the end of the tenancy. The Tenant has not provided evidence that they steam cleaned or shampooed the carpets. The Landlord has submitted an invoice for \$236.25 to clean the carpets. Therefore, I award the Landlord **\$236.25** for carpet cleaning under section 67 of the Act.

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

The Tenant claims one third of the cost of their utilities for three years, \$6,721.42, or \$100.00 to \$200.00 per month for 36 months, \$3,600.00 to \$7,200.00. The Landlord

says the cost for the outbuilding's utilities would not be more than \$50 to \$100 per month, \$1,800.00 to \$3,600.00.

Under Policy Guideline 1, If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

It is undisputed that the outbuilding was rented to another tenant and was not metered separately. The Landlord has not provided evidence to establish that they reduced the rent by \$200.00 in consideration of the utilities for the outbuilding. I find the Landlord made that statement after the fact and it was likely not a consideration in what rent was set at the outset of the tenancy. I note the Tenant's tenancy began in April 2019, and the outbuilding was not apparently rented out to the neighbor until September 2019, four months later.

I find it was unconscionable for the Landlord to require the Tenant to pay utilities for the outbuilding that was rented to another tenant. The Tenant was aware they were paying the costs for the outbuilding since around January 2021, and they did not dispute this prior to the end of the tenancy. I accept that the Tenant was concerned about complaining due to their position in the competitive rental market.

I find the Tenant is entitled to compensation. Considering that the estimated costs by both parties includes compensation in the range of \$3,600.00, I find that is a reasonable award in this case. I also find it reduces the Tenant's original claim by a reasonable amount to account for their delay in disputing payment of those utilities.

Under section 67 of the Act, I award the Tenant **\$3,600.00** compensation for payment of utilities for the outbuilding.

Which party is entitled to retain the Tenant's security and pet deposits?

I find the Landlord's right to claim against the security and pet deposit for damage to the unit was extinguished under section 36(2) of the Act, because the Landlord did not complete the required inspection reports.

Under Policy Guideline 17, if the Landlord has claimed against the deposit for damage to the rental unit and the Landlord's right to make such a claim has been extinguished under the Act, the Arbitrator will award double the deposit returned to the Tenant. However, since the Landlord's application includes a successful claim for compensation for carpet cleaning, which qualifies as a claim for "other than damages" to the rental unit, I will not double the value of the security deposit held by the Landlord.

Under Policy Guideline 31, a Landlord may only claim against a pet deposit for damage done by a pet. The Landlord must apply within 15 days, and the Landlord must have

completed a move in inspection and move out inspection as required by the Act and regulations. If the Landlord does not complete the proper inspections, they extinguish their right to claim against the pet deposit for damages, and they are not entitled to retain the deposit while awaiting the Arbitrator's decision. In this case the value of the pet deposit must be doubled.

I have found the Landlord established a claim for compensation under section 67 of the Act in the amount of \$236.25. Therefore, under section 72 of the Act, I allow the Landlord to retain \$236.25 from the Tenant's security deposit, in full satisfaction of their claims.

I find the Tenant is entitled to a Monetary Order for the return of the balance of their security and pet deposits, plus interest, under sections 38 and 67 of the Act, in the amount of **\$3,132.31** as follows.

Description	Amount
Security Deposit	\$1,100.00
Double Pet Deposit	\$2,200.00
Interest	\$68.56
Carpet Cleaning awarded to Landlord	- \$236.25
TOTAL	\$3,132.31

Is either party entitled to recover their filing fee for this application?

As both parties were partially successful with their applications, each party will bear their own filing fee.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$6,732.31** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenant for the return of their deposits plus interest minus the amount for carpet cleaning awarded to the Landlord under section 67 of the Act	\$3,132.31
A monetary order for compensation for utilities under section 67 of the Act	\$3,600.00
Total Amount	\$6,732.31

The Tenant is provided with this Order on the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this

Order, it Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the Landlord's application for compensation under section 67 of the Act is dismissed, 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: June 5, 2024

Residential Tenancy Branch