

DECISION

Introduction

This hearing dealt with the Tenants' 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

This hearing also dealt with the Landlords' application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for overholding rent under section 67 of the Act
- a Monetary Order for compensation for damage under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for compensation for a monetary loss or money owed under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain a portion or all of the Tenants' deposits under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated claims. I considered only the Tenants' application for a Monetary Order for compensation for damage or loss and in the Landlords' application, the claim for a monetary for overholding rent and the filing fee. The Landlords other claims are dismissed with leave to reapply.

Service of Notice of Dispute Resolution Proceeding and evidence (Proceeding Package)

The Tenants confirmed service of the Landlords' Proceeding Package.

The Landlords testified that they did not receive the Tenants' Proceeding Package.

During the hearing, when I asked Landlord S.B. if they knew why both packages were showing as being received by them with their signature, they replied that they had no idea as to why that would be. Given that Canada Post requires a person picking up a package to show their identification prior to a package being provided to them, I find

Landlord S.B. and Landlord N.A. are more likely than not trying to avoid service because Landlord S.B.'s signature is showing on both packages as being received by them. I also find they were served on February 26, 2024, by registered mail in accordance with section 89(1) of the Act and are deemed served February 28, 2024, the day the packages show as being delivered, in accordance with section 90 of the Act. The Tenants provided a copy of the Canada Post Customer Receipt containing the tracking numbers to confirm this service. I have included the Canada Post tracking numbers on the cover page.

Preliminary Matters

At the outset of the hearing, the Tenants testified that a previous decision had already dealt with their deposits. I have included the previous decision file number on the cover page. I find the deposits are res judicata, meaning the matter has already been conclusively decided and cannot be decided again.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation, or tenancy agreement?

Are the Landlords entitled to a Monetary Order for overholding rent?

Are the Landlords entitled to recover the filing fee for their application from the Tenants?

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 tenancy began on February 1, 2023, with a monthly rent of \$3,250.00, due on the first day of the month. The Tenants paid a security deposit of \$1,625.00 and a pet damage deposit of \$1,625.00.

Tenants' Application – Pre-Authorized Debit Payment \$1,750.00

The following is undisputed:

- on February 1, 2024, the Landlords accepted a pre-authorized debit payment from Tenant D.C.'s account in the amount of \$1,750.00
- the Landlords have not returned the \$1,750.00 to the Tenants

The Tenants testified the following:

- they moved out of the rental unit on November 15, 2023

The Landlords testified the following:

- they obtained a Writ of Possession, and the Tenants were removed by a bailiff on December 5, 2023
- the Tenants were on pre-authorized debit, that is why the Landlords were able to accept the payment of \$1,750.00 from Tenant D.C.'s account

The Tenants provided the following as evidence:

- Tenant D.C.'s bank statement showing the pre-authorized payment of \$1,750.00 on February 1, 2024, from their account
- a copy of the Writ of Possession showing an enforcement date of December 5, 2023

The Landlord provided the following as evidence:

- an email dated February 6, 2024, that they received from Tenant D.C. asking Landlord S.B. to return the payment they accepted from Tenant D.C.'s account

Landlords' Application – Unpaid Rent \$3,000.00

The following is undisputed:

- the Tenants paid \$1,750.00 for November 2023 rent

The Landlords testified the following:

- they are seeking compensation for the balance of November 2023 rent of \$1,500.00 and all of December 2023 rent of \$3,250.00
- they obtained a Writ of Possession, and the Tenants were removed by a bailiff on December 5, 2023

The Tenants testified the following:

- they moved out of the rental unit on November 15, 2023

The Landlord provided the following as evidence:

- a copy of the Order of Possession that ended the tenancy on October 31, 2023 – I have included the decision file number on the cover page
- a copy of the bailiff invoice that states the Writ of Possession was executed on December 5, 2023

Analysis

Are the Tenants entitled to a Monetary Order 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

The Tenants have proven that there has been an infraction of a legal right under section 26 of the Act which states that whether or not a Tenant pays rent in accordance with the tenancy agreement, a Landlord must not seize any personal property of the Tenant. The Tenants provided undisputed testimony that the Landlords accepted a payment of \$1,750.00 from Tenant D.C.'s bank account on February 1, 2024. The Tenants provided as evidence Tenant D.C.'s bank statement showing the payment of \$1,750.00 on February 1, 2024, from Tenant D.C.'s account. The tenancy ended on October 31, 2023, by way of an Order of Possession, therefore the Landlords should not have accepted the payment as this was not considered rent given the tenancy had already ended and a Writ of Possession for the Landlord to regain possession of the unit was on December 5, 2023. The Tenants mitigated their loss by emailing the Landlord on February 6, 2024, asking for the amount to be returned to them.

I find the Landlords were not entitled to accept the payment of \$1,750.00 from Tenant D.C.'s account on February 1, 2024, as provided in section 26 of the Act. Therefore, I find the Tenants are entitled to a Monetary Order of \$1,750.00.

Are the Landlords entitled to a Monetary Order for overholding rent?

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.

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.

Section 57 of the Act states a Landlord may claim compensation for an overholding Tenant for any period that the overholding Tenant occupies the rental unit after the tenancy is ended.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the tenancy ended by way of an Order of Possession with an effective date of October 31, 2023. I am satisfied from the Landlords' undisputed testimony that the Tenants continued to overhold the rental unit until December 5, 2023, the day the Writ of Possession was executed. The Tenants were more likely than not in the unit until December 5, 2023, and the Landlords did not regain possession of the unit until the bailiff executed the Writ of Possession.

I find the Landlords are entitled to overholding rent up until December 5, 2023, in accordance with section 57 of the Act. I also find the Landlords are entitled to the overholding rent for the balance owing of November 2023 rent of \$1,500.00 and 5 days in December 2023 in the amount of \$104.84 for a total of \$1,604.84.

Are the Landlords entitled to recover the filing fee for their application from the Tenants?

As the Landlords were partially successful in their application, I find that the Landlords are entitled to recover the \$50.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$95.16** under the following:

Monetary Issue	Granted Amount
a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act to the Tenants	\$1,750.00
A Monetary Order for overholding rent under section 67 of the Act to the Landlords	\$1,604.84
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$50.00
Total Amount Awarded to the Tenants	\$95.16

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: June 13, 2024

Residential Tenancy Branch