

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 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

The hearing dealt with the Tenant's Application for Dispute Resolution under the Residential Tenancy Act (the Act) for:

- 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 Tenant under section 72 of the Act

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

All parties acknowledged receipt of the appropriate Proceeding Packages. No concerns regarding the timing or nature of service was expressed.

All parties received the appropriate evidence. The Tenant's were unable to open the Landlord's evidence, the evidence was verbally reviewed during the April 30, 2024, hearing.

Issues to be Decided

- 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 all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
- 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 either party entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The Tenancy began on May 15, 2023, with a monthly rent of \$2750.00, due on the 15th of each month. Rent included a \$250.00 charge for utilities. A security deposit of \$1380.00 was paid at the onset of the tenancy and is still retained by the Landlord. The tenancy was to end May 15, 2024.

The Tenant gave the Landlord notice to end the tenancy on November 10, 2024, the Landlord agreed to the end of tenancy and sought to find a new tenant. The Landlord stated that they used social media and word of mouth to advertise the rental property.

The tenancy ended on December 15, 2023.

The Tenant sent the Landlord with their forwarding address on December 19, 2023 by registered mail, confirmation of delivery on December 21, 2023 was provided.

On January 3, 2024, the Landlords applied for compensation for monetary loss or other money owed, in the amount of \$4,125.00 for loss of rental income in January and December 15-31, 2023. The Landlord was able to secure a new tenant for February 1, 2024.

On January 26, 2024, the Tenants applied for dispute resolution, requesting that their security deposit be returned as they felt the Landlord was retaining it without cause, the Tenant's also requested that the deposit be doubled.

Both parties requested that the other pay back the cost of the filing fee.

The Tenant's submit that the reason they ended their tenancy early was that there were ongoing unresolved issues with cockroaches and mice. Additionally, the Tenant's submitted several photographs of renovations that were occurring at the rental property, resulting in an unreasonable and at times unsafe, amount of construction materials to be in the backyard, making it unfit for their children to play in.

A letter dated December 4, 2024, from the Tenant to the Landlord indicates that the pest issues were ongoing and significant.

The Landlords submit that they mitigated the pest control themselves and that the situation was cleared by the time of the move out. The Tenants submit that the issues were not resolved and that the last few weeks of their tenancy was awful and they could hear the mice in the home at night.

Analysis

Is the landlord entitled to 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, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

It is not disputed that the Tenant's ended the tenancy early, and in contradiction of section 45(2), which states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

It is not disputed that the Landlords were unable to secure a new tenancy until February 2024. Nor is it disputed that the Landlords suffered a loss of rental income for December 15- 31, 2024 and January 2024.

Of significance is if the Landlords followed section 7(2) of the Act by mitigating or minimizing the loss being claimed. The Tenant's proved that the rental unit had an infestation of cockroaches and mice, the letter of December 4, 2024, shows that this infestation was ongoing. The Landlords failed to prove that the infestation had been appropriately mitigated and would not have been a barrier to securing new tenants. Therefore, I am unable to find that the Landlord's appropriately minimized the losses related to rental income loss and the Landlord's application for compensation in relation to rental income loss is dismissed, without leave to reapply.

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

The Landlord applied to retain the security deposit in partial satisfaction of the compensation claimed in relation to rental income losses. As I have found that the Landlord's application for rental loss compensation is dismissed, the Landlord is not entitled to retain any portion of the Security Deposit.

The Landlord's application to retain the Tenant's security deposit 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 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.

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.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

Based on the evidence before me, I find the landlord was served with the tenant's forwarding address on December 21, 2023. I further find that the landlord was obligated to obtain the tenant's written consent to keep the security deposit or to file an application on or before December 5, 2023, 15 days after receiving the tenant's forwarding address or the tenancy ending. The Landlord filed their application on December 3, 2024.

The Tenant applied to have the Landlord ordered to return double the security deposit in accordance with section 38(6) of the Act; however as I have found that the Landlord filed a claim against the tenant within fifteen days, this provision would not be appropriate.

As indicated above, I have determined that the Landlord is not entitled to retain the Security Deposit and must return it to the Tenant, in full and calculated with interest.

Is either party entitled to recover the filing fee for this application from the tenant?

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.

As the Landlord was unsuccessful in their application, their claim for the recovery of the filing fee is dismissed, without leave to reapply.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$ 1497.23** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of the Security Deposit, calculated with interest under section 38.1 of the Act	\$1397.23
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$1497.23

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 and enforced in the Small Claims Court of British Columbia if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Landlord's application is dismissed, in its entirety, 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: July 14, 2024

Residential Tenancy Branch