

DECISION

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

Tenants' Applications:

- A Monetary Order for compensation for monetary loss or other money owed under section 67 of the Act.
- Authorization to recover the filing fee for the Tenant's application from the Landlords under section 72 of the Act.

Landlords' Application:

- A Monetary Order for the Landlords for compensation for damage to the rental, unit or property caused during the tenancy under section 67 of the Act.
- A Monetary Order for the Landlords for compensation for monetary loss or other money owed under section 67 of the Act.
- Authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act.
- Authorization to recover the filing fee for the Landlords' application from the Tenants under section 72 of the Act.

Landlord G.T., Landlord J.B attended the hearing for the Landlords.

Tenant D.A. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding

- I find that both the Tenant acknowledge that both the Tenants were served with the Notice of dispute resolution for the Landlords' application.
- I find that both the Landlords acknowledge that they were served with the Notice of dispute resolution for the Tenants' application.

Service of Evidence

- Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenants' evidence was served to the Landlords in accordance with section 88 of the Act

Issues to be Decided

- Are the Tenants entitled to a Monetary Order for compensation for monetary loss or other money owed under section 67 of the Act?
- Are the Tenants entitled to recover the filing fee for this application from the Landlord?
- Are the Landlords entitled to a Monetary Order for compensation for damage to the rental, unit or property caused during the tenancy under section 67 of the Act?
- Are the Landlords entitled to a Monetary Order for compensation for monetary loss or other money owed under section 67 of the Act?
- Are the Landlords entitled authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Orders requested in this application?
- Are the Landlords entitled to recover the filing fee for this application from the Tenant?

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.

Evidence was provided showing that this tenancy began on April 15, 2023, with a monthly rent of \$2,975.00, due on the fifteenth day of the month, and with a security deposit in the amount of \$1,478.00. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord confirmed that no move-in inspection was completed for this tenancy. The parties agreed that this tenancy ended on October 26, 2023, due to a fire at the rental unit that rendered the property uninhabitable and that initially no one, including

the Tenants and the Landlords were permitted to access the rental unit due to structural concerns. Both the Landlords and the Tenants agreed that this tenancy was frustrated as of October 26, 2023.

The Tenants submitted that they had requested the return of their rent for the period after the fire but that the Landlords have refused to return this paid rent to the Tenants. The Tenants submitted that due to the Landlords' refusal, they are requesting the return of the doubled value of their rent between October 26 - November 14, 2023, in the amount of \$3,838.40.

The Landlords submitted that they did not think that the Tenants should be entitled to the return of the rent for the period after the fire that had been paid.

The Landlord submitted that they were given approval to start cleaning up the rental property on November 2, 2023. The Landlord submitted that they reached out to the Tenants and the Tenants' insurance adjuster several times, on November 3, 15 and 23, 2023, requesting that the Tenant remove their belongings from the rental unit but that the Tenants did not remove all of their items and that it cost them \$2,177.96 to have the items safely removed, consisting of \$89.25 to have a gun locker opened for safe disposal and \$2,088.70 for a junk removal company. The Landlord submitted that they are requesting the recovery of their out-of-pocket expenses for the removal of the Tenants' items. The Landlord submitted two invoices and email strings into documentary evidence to support this portion of their claim.

The Landlord also submitted an email from their insurance company, to show that the removal of the Tenants' personal items was not covered in their insurance claim. The Tenant submitted that they had not received the emails from the Landlord and that their insurance adjuster had not been helpful to them in dealing with the personal items left in the rental unit after the fire.

The Landlord submitted that they are also claiming for \$425.00 in compensation for their personal time to deal with the Tenants' personal items abandoned in the rental unit, consisting of 19 hours of their time at the rate of \$25.00 per hour. The Landlord submitted a chronological description of their time into documentary evidence.

The Tenant submitted that they feel that they should not own the Landlord for their personal time spent managing their own property.

The Landlords submitted that they are also claiming for damages in the amount of \$735.00, consisting of \$367.50 for fall leave removal and \$367.50 to repair a damaged

post. The Landlords submitted that the Tenants did not remove the fall leave drop from the yards of the rental property and that it cost them \$367.50 to have the leaves removed in the spring. The Landlords submitted an invoice into documentary evidence.

The Tenants submitted that the leaves in the yard had been cleaned up a few weeks before the fire and that there were only a few on the ground on the day of the fire. The Tenants submitted that the majority of the leaves fell after the fire and that they should not be responsible for the removal after the tenancy had ended.

The Landlords submitted that the Tenants fence post on the rental property and that it will cost them \$367.50 to have the post repaired. The Landlords testified that the damaged post had been at least 15 years old at the end of this tenancy and had been secured in the ground with dirt. The Landlords submitted a quote into documentary evidence.

The Tenants submitted that the fence was old when the tenancy started and that it was rotting in the ground. They agreed that it did get knocked during the tenancy but that the knock would not have knocked down a new or well-maintained post. The Tenant submitted that they should not be responsible for buying the Landlords a new post.

The Landlords testified that the quote in evidence was to replace the fence post and secure it in the ground using concrete.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Inspection Report

I accept the testimony of the Landlords that they did not conduct a written move-in inspection for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

- **23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
- (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Section 19 of the *Residential Tenancy Regulations* (the "*Regulations*") states the following:

Disclosure and form of the condition inspection report

- **19** A condition inspection report must be
 - (a) in writing,
 - (b) in type no smaller than 8 point, and
 - (c) written so as to be easily read and understood by a reasonable person.

I find that the Landlords breached section 23 of the *Act* and section 19 of the *Regulation* when they did not conduct the written move-in inspection with the Tenant at the beginning of this tenancy as required.

Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

- **24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [2 opportunities for inspection],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Pursuant to section 24(2) of the *Act*, I find that the Landlords extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy.

Additionally, I also accept the testimony of both parties that the Landlords did not conduct a written move-out inspection at the end of this tenancy. Section 35 of the *Act* states the following:

Condition inspection: end of tenancy

- **35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlords breached section 35 of the *Act* when they did not conduct a written move-out inspection at the end of this tenancy as required. I acknowledge that this tenancy ended due to a fire in the rental unit; however, I find that the requirement to conduct the move-out inspection remained, and ought to have been scheduled as soon as the Landlord was given approval to access the property after the fire.

Section 36(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

- **36** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [2 opportunities for inspection],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Pursuant to section 36(2) of the *Act*, I find that the Landlords had again extinguished their right to make a claim against the security deposits for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

Return of security deposit and pet damage deposit

- **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy

condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

I find that this tenancy ended on October 26, 2023, the date of the fire at the rental unit. In addition, I find that the evidence shows that the Landlords were in receipt a valid forwarding address for this Tenant as of May 2, 2024.

Accordingly, the Landlords had until May 17, 2024, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security for this tenancy to the Tenants in full, plus interest, as the Landlords had extinguished their right to claim against the deposit for damages caused during this tenancy.

In this case, the Landlords did not return the security deposit but instead made a claim against the security deposit for damages. Consequently, I find that the Landlords breached section 38(1) of the *Act* by not returning the deposit in full, plus interest, to the Tenants within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within the 15 days, the landlord <u>must</u> pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet
damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the value of the security deposit for this tenancy has doubled in value to \$2,972.00, due to the Landlords' breach of the *Act*.

Overall, I find that the total value of the doubled security deposit plus interest, that is currently being held by the Landlords for this tenancy, is **\$3,016.23**, consisting of \$1,487.00 in the original deposit, \$1,487.00 in the doubled value due to the Landlords' breach of the Act, plus \$42.23 in interest due as of the date of this decision.

Tenants' Application

Are the Tenants entitled to a Monetary Order for compensation for monetary loss or other money owed under section 67 of the Act?

The Tenants are claiming for \$3,838.40 in compensation under section 67 of the Act, consisting of the return of the doubled value of their rent paid between October 26 to November 14, 2023, due to a fire in the rental unit.

I accept the agreed-upon testimony of these parties that there was a fire at the rental property on October 26, 2023, that rendered the rental unit uninhabitable.

The Residential Tenancy Policy Guideline #34 Frustration, states the following:

"A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

The *Frustrated Contract Act* deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the *Frustrated Contracts Act*, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated."

I find that this tenancy agreement became frustrated on October 26, 2023, the date of the fire, which rendered the rental unit uninhabitable.

I also accept the agreed-upon submissions of these parties that the Tenants had paid the rent in full for the rental period of October 15 to November 14, 2023, for this tenancy. Therefore, I find that the tenants are entitled to the return of their paid rent for the period between October 27 - November 14, 2024, at the per diem rate of \$95.96 for 19 days. For this reason, I grant the Tenants a monetary award in the amount of \$1,823.32, for the recovery of the rent paid for the period after this tenancy became frustrated.

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

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to the recovery of their **\$100.00** filing fee for this application.

Landlords' Application

Are the Landlords entitled to a Monetary Order for compensation for damage to the rental, unit or property caused during the tenancy under section 67 of the Act?

In this case, the Landlord is claiming for several items totalling \$735.00 in compensation for damages and losses due to this tenancy, consisting of \$367.50 for fall leave removal and \$367.50 to repair a damaged post. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to be awarded compensation an applicant must first prove that there has been a breach of the *Act* by the Respondent, in this case, that would be the Landlord who needs to prove that the Tenants breached the *Act* during this tenancy.

I will address each portion of this section of the Landlord's claims separately. First, the Landlord has claimed for \$367.50 in the recovery of their costs for the removal of fall leaves from the rental property.

During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the presence of fall leaves on the rental property at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have reviewed the Landlords' evidence submissions on this point, and I noted that the invoice for the fall leave removal is dated April 22, 2024, over five months after this tenancy ended, and I noted that the Landlords have failed to submit any documentary evidence that would show the condition of the yards on the rental property on the date that this tenancy ended. In the absence of any evidence, to substantiate the Landlords' testimony over that of the Tenants, I find that I must dismiss this item of the Landlord's claim.

The Landlord has also claimed for \$367.50 in the recovery of their costs for to repair a damaged post on the rental property.

During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the condition of this post at the start of this tenancy. Again, as stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have reviewed the submission of the Landlords on this point of their claim, and I find that there is no evidence before me that would show the condition of the post at the beginning of this Tenancy. I accept the submission of the Landlords, that this post was at least 15 years old when this tenancy started and that the damaged post had been wood, secured to the ground in dirt.

The Residential Tenancy Guideline # 40. Useful Life of Building Elements puts a wood fence post at a useful life of fifteen (15) years, as there is zero evidence before me to show the condition of this post at the start of this tenancy, I find that on a balance of probabilities that this post was just at the end of its life expectance at the end of this tenancy and needed replacement due to age. In the absence of any evidence, to substantiate the Landlords' testimony over that of the Tenants, I find that I must dismiss this item claimed by the Landlords in these proceedings.

Are the Landlords entitled to a Monetary Order for compensation for monetary loss or other money owed under section 67 of the Act?

In this case, the Landlord is claiming for several items totalling \$2,602.96 in compensation for monetary loss or other money owed due to this tenancy, consisting of \$89.25 to open a gun safe, \$2,088.71 for the removal of the Tenants' personal items, \$425.00 in compensation for the Landlords personal time. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to be awarded compensation an applicant must first prove that there has been a breach of the *Act* by the Respondent, in this case, that would be the Landlord who needs to prove that the Tenants breached the *Act* during this tenancy.

I will address this portion of the Landlords' claims in this portion of their application in two parts.

First, the Landlord has claimed for \$2,177.96 in the recovery of their costs to remove the Tenants' personal items from the rental property after the fire.

I have reviewed the submission of the Landlords on this point of their claim, and I find that they have provided sufficient evidence to show that the Tenants left personal items in the rental unit and that they did not return to the property after it was safe to do so, to remove those items.

Section 37 of the Act states the following:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) 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.

Pursuant to section 37(2), I find that the Tenants breached the act when they did not return to the rental unit, after the fire, to collect their personal items. I also find that the Landlords have provided sufficient evidence to show that they suffered a loss due to this breach of the Act by these Tenants, that they proved the dollar value of that loss, and that they took steps to mitigate that loss.

Therefore, I find that the Landlords have provided sufficient evidence to prove their entitlement to the recovery of their costs to have the Tenants' personal items removed from the rental unit at the end of this tenancy. I award the Landlords their requested amount of \$2,177.96, consisting of \$89.25 to open a gun safe, and \$2,088.71 for the removal of the Tenants' personal items.

It is unclear as to why the Tenants' rental insurance did not cover the removal of their personal items lost during the fire clean up; the Tenants may have a claim with their insurance company for this portion of the Landlords claim against them. However, I

noted that the Landlords have provided sufficient documentation to prove to my satisfaction that the Landlords' insurance coverage did not cover the expenses associated with the removal of the Tenants' personal items.

Finally, the Landlord has also claimed for \$425.00 in compensation for their time spent dealing with issues related to the cleanup of the Tenants' items after the fire, consisting of 17 hours of their time at \$25.00 per hour.

I have reviewed the submission of the Landlords on this point of their claim, and I find that the Landlord has not proven a breach of the Act by the Tenants, to my satisfaction, in relation to this portion of their claim. Therefore, I dismiss this portion of the Landlord claim in its entirety.

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

I find that the Landlords have been mostly unsuccessful in their claim, therefore I decline to award them their application for the recovery of their filing fee paid for this application under section 72 of the Act.

Are the Landlords entitled authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Orders requested in this application?

I grant permission to the Landlords to retain \$2,177.96, from the doubled value of the security deposit they continue to hold for this tenancy, in full satisfaction of the amounts awarded to them in this decision.

Overall, I grant the Tenants a monetary order in the amount of \$2,761.65, consisting of \$3,016.23 in the return of the double value of their security deposit, plus the interest due on the original amount of the deposit for this tenancy, \$1,823.38 in compensation for the recovery of the paid rent due to a frustrated contract, and \$100.00 in the recovery of the filing fee for the Tenant's application, less the \$2,177.96 awarded to the Landlords for losses in this decision.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,761.65** under the following terms:

Monetary Issue	Granted Amount
Return of the doubled value of the security deposit for this tenancy, plus interest, to the Tenants.	\$3,016.23
A Monetary award to the Tenants in compensation for losses or other money owed under section 67 of the Act.	\$1,823.38
Authorization to the Tenants to recover the filing fee for this application from the Landlord under section 72 of the Act.	\$100.00
A Monetary award to the Landlords in compensation for money owed under section 67 of the Act.	-\$2,177.96
Total Amount	\$2,761.65

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 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 Landlords' application for a Monetary Order for compensation for damage to the rental, unit or property caused during the tenancy under section 67 of the Act, is dismissed in its entirety.

The Landlords' application for authorization to the Tenants to recover the filing fee for this application from the Landlord under section 72 of the Act t, is dismissed in its entirety.

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 12, 2024

Residential Tenancy Branch