

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's and Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package and evidence send by email on March 27, 2024. The Landlord acknowledged being served with the Tenant's hearing package and evidence sent by email on April 18, 2024.

### **Preliminary Matter**

At the start of the hearing, the arbitrator amended the application as follows. The Landlord applied for compensation for cleaning the rental unit under the section of the application related to damage to the rental unit.

As cleaning is not considered damage under the Act or Regulation, I corrected the application to include the following:

- an application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement

This is the correct application code for monetary claims for cleaning the rental unit. This amendment does not alter the value claimed or reasons for the claim as stated in the Landlord's application served to the Tenant.

I withdrew the Landlord's claim for damage to the rental unit, as the Landlord testified that they were only claiming for cleaning under this section.

In accordance with section 64(3)(c) of the *Act*, I have amended the application.

## **Issues to be decided**

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

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 the Tenant's security deposit in partial satisfaction of the Monetary Order requested?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

## **Facts and Analysis**

This tenancy began on September 15, 2022, with a monthly rent of \$1632.00 due the first day of each month, and with a security deposit of \$800.00.

The Tenant gave their written notice to end tenancy on February 14, 2024, with an effective date of March 15, 2024. The Tenant moved out of the rental unit on March 13, 2024. The Tenant provided their forwarding address in writing the same day, in person during the move out condition inspection.

The Landlord claims \$1632.00 for unpaid rent due March 1, 2024. The Tenant testified that they did not pay any rent in March 2024. The Tenant did not move out of the rental unit until March 13, 2024, so the Landlord submits that the rent for March is owed by the Tenant.

The Landlord claims \$405.00 for cleaning the rental unit. The Landlord claims the Tenant failed to leave the rental unit reasonably clean, and provided the move out

condition inspection report and photos to support this claim. The Tenant testified that they cleaned the entire rental unit before moving out, and provided photos of the rental unit after cleaning as evidence to support their claim.

The Tenant claims \$9762.00, equivalent to six months of rent, for the Landlord's unlawful eviction, and \$912.00 for moving expenses.

The Tenant claims the Landlord asked them to move out of the rental unit on February 12, 2024, and reports the Landlord was yelling at them, threatening them, and telling them they would be evicted. The Tenant gave their notice to end tenancy on February 14, 2024, but they felt they were forced and under duress to end the tenancy. Therefore, the Tenant submits that the Landlord evicted them without cause.

The Landlord denies ever yelling at the Tenant or making any threats about the end of the tenancy. The Landlord denies ever asking the Tenant to move out. The Tenant requested that their parents be allowed to move into the rental unit, and the Landlord expressed concern that the Tenant's and their parents, four people total, would overcrowd the one-bedroom rental unit. The Landlord asked the Tenant to submit their request about their parents in writing, which they did on February 12, 2024. Two days later, the Tenant issued their written notice to end tenancy.

Both parties provided a copy of the Tenant's written notice to end tenancy sent by email February 14, 2024.

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

Section 26 of the Act says that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Tenant occupied the rental unit after March 1, 2024, the day that rent was due under the tenancy agreement. I find the Tenant breached section 26 of the Act and the tenancy agreement by not paying the rent for March 2024.

The Tenant did not have an Order or authorization from an arbitrator to deduct the rent. The Tenant did not pay to complete emergency repairs or have written consent from the Landlord to deduct the rent. For these reasons, I find the Tenant did not have a right under the Act to deduct the rent.

For these reasons, I find the Landlord is entitled to a Monetary Order of \$1632.00 for unpaid rent under section 67 of the Act.

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

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

Section 37 of the Act says the Tenant must leave the rental unit reasonably clean at the end of the tenancy.

Based on the evidence provided by both parties, I find the Tenant left the rental unit reasonably clean as required by the Act. The Tenant was not required to leave the rental unit perfectly clean, or cleaned to the Landlord's standards. The Tenant may have missed wiping a few small areas, but I find the overall state of the rental unit was reasonably clean. Therefore, I find the Landlord has failed to prove the Tenant breached section 37 of the Act.

For these reasons, the Landlord's application 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 is dismissed, without leave to reapply.

**Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the Monetary Order requested?**

Section 38 of the Act says that within 15 days of the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must make an application for dispute resolution to claim against it.

As the Tenant provided their forwarding address in writing on March 13, 2024, and the Landlord made this application on March 25, 2024, I find the Landlord made this application within the time limit set out by the Act.

Section 72 of the Act says a tenant's security deposit may be applied to a monetary order granted to a landlord.

I have found the Landlord is entitled to a Monetary Order of \$1632.00 for unpaid rent under section 67 of the Act. Therefore, I find the Landlord is entitled to retain the Tenant's security deposit of \$800.00, plus interest, in partial satisfaction of the Monetary Order under section 72 of the Act.

**Is the Landlord entitled to recover the filing fee for this application from the Tenant?**

As the Landlord was successful in this application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application from the Tenant under section 72 of the Act.

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

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the tenant must prove on a balance of probabilities that:

- 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

Based on the evidence and testimony of the parties, I find the Tenant has failed to prove on a balance of probabilities that the Landlord failed to comply with the Act, regulation, or tenancy agreement.

The Tenant's monetary claims are due to the Landlord's unlawful eviction of the Tenant from the rental unit. I find there is no evidence of any notice to end tenancy issued by the Landlord. I find the Tenant issued their notice to end tenancy on February 14, 2024, which stated the following:

"Accordingly, my last day of occupancy will be March 15, 2024. I would like to express my gratitude for your cooperation and support during my time as a tenant.

Thank you once again for your understanding and cooperation in this matter"

The Tenant claimed that the Landlord forced them to move out, under duress, with threats and yelling on the phone on February 12, 2024. If that were true, I find it unlikely that the Tenant would note the Landlord's cooperation, support, and understanding in their written notice to end tenancy.

The Tenant's claims about the Landlord's threats of eviction, which reportedly occurred on February 12, is not documented in any communication prior to February 14, 2024, when the Tenant gave their notice to end tenancy. This narrative from the Tenant did not arise until after the Landlord told the Tenant they would still have to pay rent for March 2024 in the Landlord's email of February 16, 2024. After that point, the Tenant began their emailing their complaints to the Landlord for unlawful eviction.

I find, on a balance of probabilities, that the Tenant ended this tenancy with their written notice of their own choice. I find the Landlord never issued a notice to end tenancy, and I find the Tenant failed to prove the Landlord breached any section of the Act, regulation, or tenancy agreement.

For these reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act 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 deposit?**

The Tenant's security deposit has been applied to the Monetary Orders granted to the Landlord in accordance with section 67 and 72 of the Act. For these reasons, the Tenant's application for the return of their security deposit is dismissed, without leave to reapply.

**Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

I find the Landlord is entitled to a Monetary Order of \$1732.00 under sections 67 and 72 of the Act. I Order the Landlord to retain the security deposit of \$800.00, plus interest, in partial satisfaction of this award. I Order the Tenant to pay the Landlord the balance due of **\$904.79**.

Monetary Issue	Granted Amount
Unpaid rent	\$1632.00
Landlord's filing fee	\$100.00
Security Deposit with Interest	- \$827.21
<b>Total Amount</b>	<b>\$904.79</b>

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 11, 2024

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Residential Tenancy Branch