

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 Tenant filed a cross application on June 6, 2024, under the Act, for:

- a monetary order for the return of double their security and pet deposits under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding

I find each party acknowledged service of the Proceeding Package from the other. I find all parties are duly served with the Proceeding Package and evidence under the Act.

Issues to be Decided

Is the Landlord entitled to a monetary order for compensation for loss of rental income under section 67 of the Act?

Is the Landlord entitled to retain the security or pet deposit under section 38 of the Act?

Is the Tenant entitled to the return of double their deposits under section 38 of the Act?

Is either party entitled to the return of their filing fee under section 72 of the Act?

Facts and Analysis

Based on the evidence and submissions from both parties I find as follows:

- The Tenancy began on September 1, 2023, for a fixed term ending August 31, 2024, with a monthly rent of \$3,500.00 due on the first day of each month.
- The Tenant provided a security deposit of \$1,750.00 on August 15, 2023. Interest of \$37.01 has accumulated on the deposit from that date until the date of this hearing.
- The Tenant provided a pet deposit of \$1,750.00 on September 1, 2023. Interest of \$35.42 has accrued on the deposit to the date of this hearing.
- The Landlord holds the deposits in trust at a total value of \$3,572.43.
- The parties completed a move in inspection on September 1, 2023.
- The tenancy ended on March 30, 2023, as a result of the Tenant's notice provided on February 7, 2023.
- The parties completed a move out inspection on March 30, 2024.
- The Landlord received the Tenant's forwarding address in writing on the move out inspection form on March 30, 2024.
- The parties agree there were no damages to the rental unit.
- The Landlord advertised the unit available February 14, 2024.
- The Landlord arranged more than 12 showings of the rental unit. Seven potential tenants declined.
- The Landlord signed an agreement with new tenants on March 31, 2024, providing possession on April 30, 2024. The monthly rent under the new agreement is \$100.00 less than the rent the Tenants were paying.
- The Landlord applied to retain the deposits for loss of rental income on April 3, 2024.

The Tenant says the Landlord was not entitled to hold their deposits on the basis of a claim for lost rental income. The Tenant says the Landlord did not make reasonable efforts to re-rent the unit as soon as possible after receiving the Tenant's notice to end the tenancy.

The Landlord says they made reasonable effort to re-rent the unit. The Landlord says there is a limited pool of acceptable renters at this rate of rent. The suitable families have young children who may have to change schools if they were moving, further

limiting the number of interested applicants. The Landlord says they declined some applicants based on poor credit, poor references, or large pets.

The Landlord wanted to secure the tenants they eventually accepted so they offered to reduce rent by \$100.00 per month to account for the extra fuel costs the new tenants would encounter by moving to the rental unit farther away from their workplace.

The Tenant says the Landlord could have advertised the rental unit sooner; the Landlord could have provided more accurate description of the rental unit in the advertisement; and rental properties do not usually sit on the market for long.

Is the Landlord entitled to a monetary order for compensation for loss of rental income under section 67 of the Act?

I find the Tenant ended the fixed term tenancy early in breach of section 45(2)(b) of the Act. Under Policy Guideline 3, the Landlord is entitled to claim compensation for any loss of rent up to the earliest date the Tenant could have legally ended the tenancy.

As required under Policy Guideline 5, I find the Landlord acted reasonably to minimize their losses. I find the Landlord made reasonable effort to re-rent the unit as soon as possible given the circumstances.

Given that new applicants for the rental unit would most likely have to provide one month's notice to end their current tenancy, any showings in March 2024, would reasonably result in a tenancy beginning May 1, 2024. I find it would be unfair to the Landlord to expect them to find replacement tenants in February given the challenges they have explained.

The Landlord posted the advertisement within a week of receiving notice from the Tenant and arranged a fair number of showings. The Landlord had valid reasons to turn down some interested applicants. I accept the Landlord's argument that the pool of interested applicants is less during the school year and at that rate of rent. I find the Landlord acted reasonably to reduce the rent by \$100.00 to secure the tenants they found acceptable.

On a balance of probabilities, I find the Landlord has provided sufficient evidence to establish their claim for a loss of rental income. I find the Landlord is entitled to lost rental income for April 2024 in the amount of \$3,500.00 and the reduced value of the new tenancy agreement in the amount of \$400.00, based on the \$100.00 reduction from May to August 2024, for four months.

Therefore, under section 67 of the Act, I grant the Landlord a monetary order for compensation of \$3,900.00.

Is the Landlord entitled to retain the security or pet deposit under section 38 of the Act?

I find the Landlord applied to retain the deposit within 15 days as required under section 38 of the Act. Under Policy Guideline 17, since the Landlord's claim for lost rental income is 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 and section 38(7) of the Act, a Landlord may only claim against a pet deposit for damage done by a pet. Since the Landlord has not filed a claim for damages done by a pet, the Landlord was not entitled to retain the pet deposit while awaiting the hearing of this matter. For that reason, the value of the pet deposit held in trust by the Landlord will be doubled.

I find the Landlord holds the deposit amount of \$5,322.43 as follows:

Description	Amount
Security deposit	\$1,750.00
Security deposit interest	\$37.01
Pet deposit	\$1,750.00
Pet deposit interest	\$35.42
Double value of pet deposit	\$1,750.00
TOTAL	\$5,322.43

I have found the Landlord established a claim for compensation under section 67 of the Act in the amount of \$3,900.00. Therefore, under section 72 of the Act, I allow the Landlord to retain \$3,900.00 from the Tenant's security and pet damage deposits, in full satisfaction of their claims.

Under section 72 of the Act, I find the Tenant is entitled to the return of the balance of their deposits, in the amount of \$1,422.43.

Under section 67 of the Act, I grant the Tenant a monetary order for \$1,422.43.

Is either party entitled to the return of their filing fee under section 72 of the Act?

Under section 72 of the Act, I find that each party shall bear the cost of their own filing fee because each party was partly successful in their claims.

Conclusion

I order the Landlord to retain \$3,900.00 from the Tenant's deposits in full satisfaction of the Landlord's claims.

I grant the Tenant a monetary order for the return of the balance of their deposits, plus interest, in the amount of **\$1,422.43**. The Tenant is provided with this order on the

above terms. The Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Each party shall bear the cost of their own filing fee.

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 4, 2024

Residential Tenancy Branch