

DECISION

Introduction

This 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 under sections 38 and 67 of the Act

and the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

The Landlord provided a copy of the tenancy agreement. It shows a monthly rent of \$1600.00 that is due on the first. No security deposit is recorded in the tenancy agreement, but both parties affirm that one was paid to the Landlord. The Landlord affirms the amount paid was \$800.00, while the Tenant affirms that \$750.00 was paid.

In the absence of further evidence, I find it most likely that the amount of the security deposit paid was \$750.00

Issues to be Decided

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

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

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

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

Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

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

Section 38(1) of the Act states the landlord must return the security deposit within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing or make an application for dispute resolution claiming against the security deposit or pet damage deposit within the said 15 days.

The Tenant affirms serving the Landlord with her forwarding address by registered mail on January 26, 2024. The Landlord denies receiving this and affirms not receiving the Tenant's forwarding address until the end of April 2024. The Tenant provided a Proof of Service RTB-41 to support service of her forwarding address on January 26, 2024. The Landlord confirms that the address on the RTB-41 is that of the agent who represents him.

I find it most likely that the Tenant did send her forwarding address to the Landlord on January 26, 2024; I deem, under section 90, the Landlord was served with the Tenant's forwarding address on January 31, 2024

Both parties agree that the Tenant did not agree in writing that the Landlord could retain the security deposit. Furthermore, the Landlord did not apply for dispute resolution to keep said security deposit until May 3, 2024, more than 15 days after the end of the tenancy and the date I deem he received the Tenant's forwarding address.

I find the Landlord did not comply with section 38(1) of the Act.

Section 38(6) of the Act states if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

For the above reasons I find the Tenant is entitled to a Monetary Order for the return double their security deposit under sections 38 and 67 of the Act, an amount of \$1500.00

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

Both parties agree that the Tenant gave a notice to end tenancy, that did not fit the requirements of section 52 of the Act, on November 4, 2023. They both further agree that the Tenant vacated the rental unit on November 20, 2023

Section 45 of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

The Landlord affirms re-renting the rental unit on December 15, 2023, to a new tenant. He provided a copy of a tenancy agreement to support this; it has a start date of December 15, 2023, and a rent of \$1800.00.

I find that the Tenant did not give the Landlord proper notice to end tenancy and that her tenancy ended on December 15, 2023, when the rental unit was re-rented. Per Policy Guideline 3, the Tenant is liable to pay rent until the end of the tenancy.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act in the amount of \$800.00.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Policy Guideline 16 outlines that 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.

The Landlord has not provided photographs of the alleged damages, nor were receipts, invoices or estimates provided to establish the value of the alleged damage. Therefore, I find that the Landlord has not sufficiently proven the amount of damage caused by the Tenant, nor its value.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act 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?

As I find the Landlord did not comply with section 38(1) of the Act, the Landlord, under section 38(6) of the Act states a landlord may not make a claim against the security deposit.

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

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

As the Landlord was only partially successful with their application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant the Landlord a Monetary Order for unpaid rent under section 67 of the Act in the amount of **\$800.00**.

I grant the Tenant a Monetary Order for the return of double their security deposit under sections 38 and 67 of the Act in the amount of **\$1500.00**.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

In summary:

I grant the Tenant a Monetary Order in the amount of **\$700.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for double their security deposit under sections 38 and 67 of the Act	\$1500.00
a Monetary Order to the Landlord for unpaid rent under section 67 of the Act in the amount of \$800.00.	-\$800.00
Total Amount	\$700.00

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: July 12, 2024

Residential Tenancy Branch