

DECISION

Introduction

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

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for damage to the rental unit or common areas
- 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

The Tenant acknowledged being served with the Landlord's hearing package and evidence sent by registered mail on May 14, 2024, and the Landlord's additional evidence package received by registered mail on July 16, 2024.

The Landlord acknowledged being served with the Tenant's evidence sent by registered mail on June 29, 2024, and the Tenant's hearing package sent by registered mail on July 4, 2024.

Issues to be decided

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 Order requested? If not, 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 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?

Facts and Analysis

This tenancy began on January 1, 2024, with a monthly rent of \$750.00 due the first of each month, and with a security deposit of \$375.00.

Both parties testified that condition inspection reports were not completed at the start or end of the tenancy. The Landlord claims they gave the Tenant an option to complete a move in walk through but did not schedule or require a move in condition inspection. The Tenant provided their forwarding address to the Landlord by registered mail sent on April 25, 2024.

The rental unit is a bedroom in the basement suite of the Landlord's house. The other bedrooms of the basement suite were occupied by different tenants under separate tenancy agreements.

The tenancy was a fixed term starting January 1, 2024, and ending April 1, 2024. The tenancy agreement included a vacate clause, requiring the Tenant to move out at the end of the fixed term period, so the Landlord could use the rental unit. The Landlord testified that the reason for the vacate clause was so the Landlord could complete renovations to the rental unit, including moving and upgrading electrical panels in the bedroom, adding closet shelving, and repairing and painting the walls.

The Landlord claims \$1150.00 for unpaid rent for the month of April 2024. The Landlord testified that the parties discussed, by message, extending the fixed term period beyond the end date of April 1, 2024. The Tenant requested to extend the fixed term, and the Landlord agreed over message to extend the fixed term by three or six months. The parties never decided on how long to extend the fixed term, nor did they make any formal agreement to extend the fixed term. No new tenancy agreement was signed by either party.

On March 8, 2024, the Tenant sent the Landlord a message via Facebook about various problems they were having with the other tenants in the basement suite. The Tenant stated they would be moving out of the rental unit on May 1, 2024. The Tenant moved out of the rental unit on April 1, 2024, without notice to the Landlord, and did not pay the rent due for April 2024.

The Tenant testified that they told the Landlord they would move out on May 1, 2024, but due to escalating problems with the other tenants of the suite and a serious ant infestation, the Tenant decided to move out at the end of the fixed term as required by the tenancy agreement. The Tenant further stated that the Landlord did not agree, in writing by signed agreement, to extend the tenancy beyond the effective end date of the fixed term tenancy. The Tenant moved out of the rental unit on April 1, 2024, in accordance with the tenancy agreement.

Both parties provided the tenancy agreement, and copies of messages and communications between the parties as evidence to support their claims.

The Landlord claims \$125.00 for the cost to paint the rental unit. The Landlord claims the Tenant damaged the paint on one of the walls in the rental unit. The Landlord claims the rental unit was freshly painted in early 2023, just before the occupant prior to this Tenant moved into the rental unit. The Landlord claim the previous occupant did not damage the paint. The Landlord provided photos of the wall and a copy of the receipt for the painting as evidence to support this claim.

The Tenant testified that they did not cause any damage to the paint in the rental unit. The Tenant claims the damage was existing when they moved into the rental unit, and the Landlord told the Tenant they planned to paint the rental unit after the Tenant moved out on April 1, 2024.

The Landlord claims \$85.00 for the cost to clean the carpets in the rental unit after the Tenant moved out. The Landlord described the carpets as dirty and odorous, and provided a video of the carpet as evidence to support their claims.

The Tenant testified that they vacuumed the carpets at the end of the tenancy. The Tenant claims they did not shampoo or steam clean the carpets as there was an active ant infestation at the time the Tenant moved out, and the Landlord's stated reason for ending the tenancy was not renovate the room at the end of the fixed term. The Tenant provided photos of the carpet taken on the day of move out as evidence to support their claims.

The Landlord claims \$250.00 for the cost to readjust the front door of the Landlord's home. The Landlord claims the Tenant came to their door near the end of the tenancy, late at night, and was banging on the door and yelling. The Landlord claims they noticed the door was pushed out from the frame and dented after the Tenant's excessive banging. The Landlord provided a photo of a gap in their front door, emails from the other occupants of the basement suite about the incident, and a receipt for the repair as evidence to support their claims.

The Tenant denies causing any damage to the Landlord's front door, and denies ever banging on the Landlord's front door.

The Tenant claims \$2000.00 for an ant infestation in the rental unit during the final month of the tenancy, March 2024. The Tenant claims the rental unit was infested with ants, and the Landlord failed to hire an exterminator to eliminate the infestation. The Tenant described ants in various areas of the rental unit, most notably in the kitchen and bedrooms.

The Tenant claims the Landlord was unresponsive to their requests to deal with the ant infestation, and the Tenant had to live with the ant infestation for 21 days due to the

Landlord's failure to address the problem. The Landlord told the Tenant to clean with pinesol, and the Landlord used ant poison, but the Landlord failed to hire a professional to resolve the issue. The Tenant claims \$2000.00 because they believe this is fair compensation for having to live in the ant infested conditions due to the Landlord's failure to act.

The Tenant provided photos and videos of the ants in the rental unit, and copies of messages with the landlord about the problem, as evidence to support their claims.

The Landlord testified that there were ants in the rental unit, but it was not an infestation and was not so severe as to require a professional exterminator to attend the rental unit. The Landlord minimized their loss by purchasing ant poison and putting it in areas where the ants were located and accessing the rental unit.

The Landlord testified that they expected it would take some time for ants to collect the poison and take it back to their nest to eliminate the problem and prevent the ants from returning. The Landlord testified that they diligently used the poison until they were notified by the other occupants that the ants were not returning to the rental unit. The Landlord claims the ant problem was significantly reduced by the end of March, and fully resolved within the first week of April.

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

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement.

Section 44(1)(b) of the Act says a tenancy ends if the tenancy is a fixed term tenancy agreement that requires the tenant to vacate the rental unit at the end of the term.

Tenancy Policy Guideline 30 says a vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term. A tenant must move out of the rental unit on the date the tenancy ends.

Based on the evidence and testimony of both parties, I find this tenancy was a fixed term ending April 1, 2024. I find that, although the parties discussed the possibility of extending the tenancy, the parties did not sign a new tenancy agreement, or enter any written agreement to extend the end of the fixed term past April 1, 2024.

I find the Tenant's notice to end tenancy given by message on March 8, 2024, effective May 1, 2024, was not a valid or effective notice to end tenancy. The notice was not provided or served in accordance with the requirements of the Act, does not include the Tenant's name, the address of the rental unit, or the Tenant's signature as required under sections 45 and 52 of the Act. Therefore, I find that the Tenant's message sent March 8, 2024, did not override the contractually agreed upon end date of April 1, 2024.

I find the Tenant complied with the tenancy agreement by moving out on April 1, 2024, in accordance with the vacate clause of the tenancy agreement. Under section 26 of the Act, the Tenant's obligation to pay rent due under the tenancy agreement ended on April 1, 2024. I find the Tenant is not required to pay the rent beyond the agreed upon end date of the tenancy.

For the reasons above, I find the Landlord has failed to prove that the Tenant breached the Act or tenancy agreement by not paying the rent April 1, 2024.

Therefore, the Landlord's application for unpaid rent of \$1150.00 is dismissed, without leave to reapply.

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

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, the landlord must prove:

- 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 32(3) of the Act says a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the evidence and testimony of both parties, I find the Landlord has failed to prove, on a balance of probabilities, that the Tenant breached section 32(3) of the Act by causing damage to the paint in the rental unit and not repairing this damage.

The Landlord failed to provide any evidence of the condition of the rental unit before this tenancy began. The Landlord failed to complete a move in condition inspection report as required under section 24 of the Act. The Landlord testified that the rental unit was painted before a previous tenancy, and did not provide any evidence of the condition of the rental unit after that previous tenancy.

Therefore, I find the Landlord has failed to prove their claim for \$125.00 to paint the rental unit, as the Landlord has not proven the Tenant breached the Act, regulation, or tenancy agreement.

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

Based on the testimony of both parties, I find the Tenant breached the Act by not shampooing or steam cleaning the carpets of the rental unit, which is listed as a Tenant's cleaning requirement under tenancy policy guideline 1.

However, I find the Landlord has failed to prove the value of their loss. The Landlord did not provide any documentary evidence of the cost to clean the carpets in the rental unit. The Landlord did not testify or provide evidence of hiring a professional carpet cleaner, or renting or purchasing any carpet cleaning devices. The Landlord did not provide any receipt or invoice for the cost to clean the carpets.

Therefore, I find the Landlord has failed to prove their claim for \$85.00 to clean the carpets of the rental unit, as the Landlord has failed to prove the value of their loss.

Section 32(3) of the Act says a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the evidence and testimony of both parties, I find the Landlord has failed to prove, on a balance of probabilities, that the Tenant damaged the Landlord's front door.

I find the Landlord has not provided sufficient evidence to prove that the Tenant caused damage to the Landlord's front door. I find the Landlord's photo of a gap on the door does not provide any information about how the gap could be caused. The Landlord did not provide any documentary evidence or testimony from an expert verifying that the gap could be caused by a person banging on the door from the outside.

I further find the emails the Landlord provided from other third parties are vague, and lack sufficient detail to convince me the incident occurred in the way described by the Landlord. The emails note various issues these parties had with the Tenant during their tenancy, and vaguely reference an incident at the Landlord's front door occurring at 11:30pm. There are no dates provided for this incident, and no details about what actually occurred.

I find the Landlord's testimony about the incident is not sufficient to prove that the Tenant's actions caused the damage to the door as the Landlord claims.

Therefore, I find the Landlord has failed to prove their claim for \$250.00 for damage to the front door, as the Landlord has not proven, on a balance of probabilities, that the Tenant breached the Act or caused the damage to the door.

For the reasons above, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under section 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 Order requested? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

I find the Tenant provided their forwarding address in writing on April 25, 2024, and Landlord made their application on May 7, 2024, within the time allowed under section 38 of the Act.

As the Landlord was not successful in their applications for a Monetary Order for unpaid rent and damage to the rental unit, I find the Landlord is not entitled to retain any amount from the Tenant's security deposit.

Therefore, I find the Tenant is entitled to the return of the full amount of their security deposit, \$375.00, plus interest, under section 38 of the Act.

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

As the Landlord was not successful in their application, the Landlord's application to recover the \$100.00 filing fee paid for this application under section 72 of the Act is dismissed, without leave to reapply.

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 states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, the landlord must prove:

- 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

Based on the evidence and testimony of both parties, I find that the rental unit had a problem with ants during March 2024.

While I accept that there were ants in the rental unit, and that this was not an ideal situation for the tenant, I find the Tenant has failed to provide any documentary evidence to prove the value of their loss.

I find the Tenant was able to occupy the rental unit, without risk to their health, safety or security, during the month of March 2024. I find that while the presence of ants was likely inconvenient, this does not amount to a loss of use of the rental unit.

I find the Tenant has not provided any receipts or invoices to support their claim for \$2000.00 in compensation. The Tenant failed to provide any basis for how they arrived at this figure. The Tenant did not provide any examples of similar cases, or any evidence that this amount of compensation would be reasonable in these circumstances.

For the reasons above, I find that the Tenant has failed to prove the value of their loss under section 67 of the Act.

Therefore, 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.

Conclusion

I grant the Tenant a Monetary Order of **\$381.45**, for the return of their security deposit, plus interest, under sections 38 and 67 of the Act.

The Tenant must serve this Order to the Landlord as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

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: August 21, 2024

Residential Tenancy Branch