

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 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

This hearing also dealt with the Tenant's Cross 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord K.T., Landlord's Daughter and Agent B.C. attended the hearing for the Landlords.

Tenant S.K.B., Tenant J.B.B. attended the hearing for the Tenants.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence

Both parties affirmed that there were no issues with service of the Landlord's application and the evidence. I find that both parties were duly served with the materials in accordance with section 88 and section 89 of the Act.

Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence

Both parties affirmed that there were no issues with service of the Tenant's cross application and the evidence. I find that both parties were duly served with the materials in accordance with section 88 and section 89 of the Act.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit or the 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? Is the Tenant entitled to recover the filing fee?

Background and Evidence

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

The written tenancy agreement was provided showing that this tenancy began on June 1, 2023, with a monthly rent of \$2,850.00, due on twenty-eighth day of each month, with a security deposit in the amount of \$1,425.00. The tenancy ended on April 15, 2024, when the Tenant requested and was permitted to move out of the rental unit. The Landlord received the Tenant's forwarding address on April 15, 2024. The rental unit is a townhouse, and the Tenant had exclusive possession of the entire townhouse.

The parties agreed that no condition inspection report was completed during the move in. The parties agreed that a move out condition inspection was conducted on April 15, 2024, at the end of the tenancy.

The Landlord requested compensation in the amount of \$521.00. The Landlord testified that the Tenant left the rental unit in an unreasonably dirty condition. The Landlord elaborated that the refrigerator, the kitchen, the stove, and the carpets at the rental unit was returned in a dirty condition. The Landlord stated that the rental unit was also returned with missing hardware from the stairs.

The Landlord submitted an invoice dated April 20, 2024, for cleaning services for the kitchen at a cost of \$213.75, and an invoice dated April 30, 2024, for carpet cleaning at a cost of \$200.00. In addition, the Landlord submitted a receipt from the hardware store in the amount of 107.25, for the cost of replacing the hardware from the stairs. The Landlord also submitted a substantial amount of pictures of the rental unit taken on April 15, 2024.

The Tenant J.B.B. raised the issue that the hardware receipt does not indicate what exactly was purchased. J.B.B also raised the issue that one of the cleaning invoices does not include a company name or any contact details.

The Tenant J.B.B. emphasized that the Landlord did not complete a move in condition inspection report. J.B.B. testified that some of the damage existed before the tenancy began, and that some of the damage the Landlord is claiming was caused by wear and tear.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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

Section 37(2) of the Act states that when the tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation
3. The value of the damage or loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

All four conditions of the four-point test must be satisfied in order to be awarded compensation.

Based on the evidence, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for damages to the rental unit caused during the tenancy.

I accept the Landlord's testimony and evidence to demonstrate that the Tenants breached section 37(2) of the Act by returning the rental unit in a condition that was not reasonably clean and undamaged. While the Tenants raised the issue of wear and tear, I am not persuaded by the Tenants evidence here. I find that the Landlord satisfied the first condition of the four-point test.

I assign significant weight to the Landlord's picture evidence, and invoice evidence to show that the rental unit did incur damages due to the Tenant's breach. I find that this satisfies the second condition of the four-point test.

I accept the Landlord's two invoices and receipt evidence to show the value of the damages. I find that this satisfies the third condition of the four-point test. While the Tenant raised the issue that the hardware store receipt does not specifically mention what was purchased, given the date of the purchase and the totality of the circumstances, I find it more likely than not that this cost was incurred due to the missing hardware at the stairs of the rental unit as the Landlord claimed. I find that this satisfies the third condition of the four-point test.

I accept the Landlord's acted reasonably to arrange for cleaning services and order replacement hardware once they found out about the damages. I find that this satisfies the fourth condition of the four-point test.

The Landlord's application is granted. Under section 67 of the Act, I find that the Landlord is entitled to a Monetary Order in the amount of \$521.00.

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(1) states that within 15 days after the later of either the date the tenancy ends or the date the landlord receives the forwarding address in writing, the landlord must repay the security deposit or make an application claiming against the security deposit or pet damage deposit.

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

In this case, the parties agreed that the tenancy ended on April 15, 2024, and that the Landlord received the Tenant's written forwarding address on April 15, 2024. On review of the Residential Tenancy Branch Dispute Management System, I find that the Landlord filed their application on May 13, 2024. I further find that the Landlord did not file their application within the required timeline.

Consequently, I find that the Landlord breached section 38(6) of the Act, and under section 38.1 of the Act, I find that the Tenant is entitled to the return of double the amount of the \$1,425.00 security deposit, plus interest in the amount of \$40.33 on the original amount. The original security deposit, the doubled portion, and the accumulated interest on only the original security deposit combined equals \$2,890.33.

Section G of Policy Guideline #17 provides guidance on set off, it states that where a landlord and a tenant applies for a monetary order and both matters are heard together,

the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. As the Landlord was granted a Monetary Order in the amount of \$521.00 for damages to the rental unit, and the Tenant was granted a Monetary Order in the amount of \$2,890.33 for return of the security deposit, the amounts are set off against each other with the Tenant's monetary award remaining in the amount of \$2,369.33.

Under section 38.1 and section 67 of the Act, I grant the Tenant a Monetary Order in the amount of \$2,369.33.

Is the Landlord entitled to recover the filing fee? Is the Tenant entitled to recover the filing fee?

As both the Landlord and the Tenant were successful in their respective applications, I find that both the Landlord and the Tenant is entitled to recover the filing fee from each other. Given this hearing dealt with the Landlord's application and the Tenant's cross application, the amounts awarded set-off against each other and the remaining balance is zero. Based on this, I decline to issue a Monetary Order to the Landlord, and I decline to issue a Monetary Order to the Tenant.

Conclusion

The Landlord's application requesting compensation is granted.

The Tenant's application requesting for the return of the security deposit is granted.

The amounts granted are set off against each other, and ultimately, I grant the Tenant a Monetary Order in the amount of \$2,369.33 under section 38.1 and 67 of the Act.

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00.

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 14, 2024

Residential Tenancy Branch