

DECISION

Introduction

This hearing dealt with an application filed by both the Tenant and the Landlord pursuant to the Residential Tenancy Act (the “Act”):

The Tenant applied for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act

The Landlord applied for:

- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72 of the Act

Tenant PH attended the hearing for the Tenant with PN attending as their agent.

Landlord AS attended the hearing for the Landlord with AA attending as their agent.

Service of the Tenant’s Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant testified that they served the Landlord with their Proceeding Package and evidence on May 31, 2024, by registered mail. The Tenant testified that they had two days from the date of their application to serve the Landlord with all of the required documents which they did. The Tenant testified that they included the Notice of Dispute Resolution Proceeding Package as well as their evidence in the registered mail package.

In response, AA testified that in early June, they received a registered mail package that contained only the Respondent’s Instructions for Dispute Resolution. AA testified that

they contacted the Residential Tenancy Branch after having received the registered mail package and were provided with a courtesy copy of the Tenant's Notice of Dispute Resolution Proceeding. According to records at this office a courtesy copy of the Tenant's Notice of Dispute Resolution document was sent to the Landlord by email on June 4, 2024.

I have considered the positions of the parties, and I acknowledge the conflict in the evidence. With that said, I find AA's testimony detailed and compelling, particularly when I consider it does not make logical sense that the Tenant who had recent experience making an application against the Landlord would serve the Landlord with a package for the purpose of providing notice of this hearing, without any notice of the hearing included in that package. For that reason, I find in favour of the Tenant, on a balance of probabilities that they more likely than not served the Landlord with the Notice of Dispute Resolution Proceeding Document and additional required documents in the registered mail package that was mailed on May 31, 2024, and received by the Landlord shortly thereafter.

Having made that finding, I find it important to note that regardless of what was contained in the registered mail package, the Landlord was aware of the Tenant's application against them more than two months prior to the hearing and that it stemmed from a previous decision of this office in which the Tenant was given leave to reapply. As the Landlord had more than two months to prepare a response to the Tenant's application, I find it of no prejudice to the Landlord to proceed with the Tenant's application. Ultimately, I find the Landlord was sufficiently served with the Tenant's Proceeding Package based on section 71(2) of the Act, and I proceeded with the hearing on that basis.

The Tenant acknowledged receipt of the Landlord's Proceeding Package and evidence by registered mail. On that basis, I find the Tenant was served with the Landlord's Proceeding Package in accordance with section 89 of the Act.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to 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 pursuant to section 67 of the Act?

Is the Landlord entitled to authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act?

Background and Evidence

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

The parties agreed that this tenancy began on July 1, 2022, and ended on October 3, 2023, when the Tenant vacated the rental property. Monthly rent was \$3,500.00 due on the first day of the month. The Landlord collected a security deposit in the amount of \$1,750.00 which they continue to hold. A copy of the written tenancy agreement is submitted into evidence.

The parties confirmed that in a decision of this office dated April 16, 2024, an Arbitrator found that the Tenant's forwarding address was sufficiently served to the Landlord on that date. The relevant section of the decision states the following:

I am therefore dismissing the Tenant's claim with leave to reapply. Given that the Landlord acknowledged during the hearing that the Tenant's address was received with the Notice of Dispute Resolution Proceeding, I am determining that the Tenant's forwarding address was sufficiently served as of the date of this decision. This means that the Landlord now has 15 days to either return the deposit or file for dispute resolution. If the Landlord does neither, the Tenant is free to bring a new application and claim the return of double the security deposit.

The Tenant is seeking a Monetary Order in the amount of \$3,500.00 which is the equivalent of double their security deposit.

The parties agreed that a move-in condition inspection report was completed and both parties were in attendance. AA testified that they do not recall if they provided the Tenant with a copy of the Move-In Condition Inspection Report. The Tenant testified that the Landlord did not provide them with a copy of the Move-In Condition Inspection Report.

The parties agreed that no Move-Out Condition Inspection Report was completed. The Tenant testified that they were not contacted by the Landlord for the purpose of

scheduling a move-out condition inspection. The parties agreed that the Tenant did not authorize the Landlord to retain all or a portion of their security deposit.

The Landlord is seeking a Monetary Order in the amount of \$7,000.00 for unpaid rent. AA testified that the Tenant ended the tenancy early without providing sufficient written notice to end the tenancy to the Landlord. AA testified that on October 3, 2023, they received a text message from the Tenant indicating that they left the key in the mailbox. AA testified that based on the Act, the earliest the Tenant's text message could have been effective as written notice to end the tenancy was November 30, 2023. AA testified that the Tenant did not pay rent for the month of October or November 2023, and, on that basis, they are seeking a monetary order in the amount of \$7,000.00.

AA testified that they attempted to rent the rental unit out by putting adds on Craigslist and Marketplace and although they had some interest, they were unable to rent the property out until February and were forced to rent the unit out for less than what the Tenant was paying at that time.

The Tenant testified that they advised the Landlord that they were looking for alternative accommodations because they could no longer afford the rent. The Tenant testified that the Landlords placed the rental unit on Craigslist prior to the Tenant vacating. The Tenant testified that they communicated verbally with the Landlord that they would be leaving after July 1, 2022, and they thought it was sufficient that the Landlords knew they would be moving out when they found a new place. The Tenant conceded that they should have confirmed what was required of them in terms of providing the Landlord notice to end their tenancy.

The Landlord is seeking a Monetary Order in the amount of \$41.29 for unpaid BC Hydro utilities for the billing period of June to August 23, 2023. The Landlord testified that they emailed the Tenant to notify them of this bill, but the Tenant failed to pay it. A copy of the email is submitted into evidence.

The Tenant testified that they believe they paid this bill.

The Landlord is seeking a Monetary Order in the amount of \$26.60 for unpaid utilities for the billing period of August 24, 2023, to October 24, 2023. AA testified that while the bill for that period was \$41.29, they have decreased the amount owing to account only for the days the Tenant was residing in the rental property.

The Tenant conceded they did not pay this bill and agreed to reimburse the Landlord for the outstanding utilities in the amount of \$26.60.

The Landlord is seeking a Monetary Order in the amount of \$425.00 for the cost of move-out cleaning. AA testified that the Tenant did not clean the rental unit prior to vacating. AA testified that the rental unit was left dirty. AA testified that the appliances were dirty with crumbs left in the microwave, the carpets had not been professionally cleaned or vacuumed, the counters were not wiped, and the windowsills were dusty. AA drew my attention to photographs to support their assertion that the Tenant did not clean the rental unit.

The Landlord submitted a copy of an invoice from I Maid It Cleaning service in the amount of \$425.25. The Landlord submitted cleaning quotes from two other cleaning services. AA testified that the cleaning was completed, and the invoice was paid.

The Tenant testified that they are a very clean person and disputed that the rental unit was not clean. The Tenant testified that they cleaned the carpet in the bedroom with a machine they purchased and had the rugs professionally cleaned.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) 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, the landlord must either repay any security and/or pet damage deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act states that if the landlord does not return the security and/or pet damage deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security and/or pet damage deposit.

Based on the evidence before me, I find that the Landlord received the Tenant's forwarding address on April 16, 2024. The parties agree that the Landlord did not have the Tenant's agreement in writing to retain all or a portion of that security deposit. The Landlord conceded that they are still holding the Tenant's security deposit. There is no evidence before me to support that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address to retain a portion of the security and/or pet damage deposit as required under section 38(1).

Based on the foregoing, under section 38(6) of the Act, I find that the Landlord must pay the Tenants double the security deposit, plus interest, as they have not complied with section 38(1) of the Act.

Policy Guideline 17 sets out that where a landlord has to pay double the security deposit and/or pet damage deposit to the tenant, interest is calculated only on the original security deposit and is not doubled.

Based on the foregoing, I order the Landlord to return to the Tenant double the security deposit plus interest. To give effect to this order, the Tenants are granted a monetary order in the amount of \$3,564.95 as set out below.

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

Based on section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenant wanted to end the tenancy by September 30, 2023, meaning rent was not due on October 1, 2023, the latest day the tenant could provide written notice to end the tenancy was August 31, 2023. Instead, the Landlord's documentary evidence shows that the Tenant did not

provide written notice, but rather notified the Landlord on October 3, 2023, that they had vacated the rental unit.

As the Tenant did not provide the Landlord with one clear calendar month's Notice, I find in favour of the Landlord that the Notice to End Tenancy was effective on November 30, 2023. Therefore, I find that rent was due on October 1, 2023, and November 1, 2023. Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the foregoing, I find that the Tenant failed to pay rent that was due for the month of October 2023 and November 2023. Based on the foregoing, I find that the Landlord has established a claim for unpaid rent owing for the month of October and November 2023 in the amount of \$7,000.00

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$7,000.00 as set out below.

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

I have considered the Landlord's claim in the amount of \$41.29 for unpaid BC Hydro utilities for the billing period of June to August 23, 2023, and their documentary evidence to support this claim. While the Tenant suggested that they paid this bill, they have not provided any documentary evidence such as a bank statement or e-transfer documentation to support this assertion. On that basis, I find the Landlord has established their claim in the amount of \$41.29 for unpaid BC Hydro utilities for the billing period of June to August 23, 2023.

The Tenant conceded that they owe the Landlord \$26.60 for unpaid BC Hydro utilities for the billing period of August 24, 2023, to October 3, 2023.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$66.89 as set out below.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act?

Section 37(2) of the Act imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state at the end of a tenancy. I have considered the Landlord's evidence and the testimony of the parties regarding this claim

I have considered the testimony of the parties and the documentary evidence of the Landlord and while I acknowledge the Landlord's photographs supports there may have been some deficiencies in the cleanliness of the rental unit at the end of the tenancy, it falls short of establishing the Landlord's claim that the entire rental unit required cleaning and more specifically that the carpets required professional cleaning. Importantly, the standard of cleanliness required to be deemed "reasonable" is not a professional standard. For this reason, I find the Landlord has not provided sufficient evidence to support their claim in full. With that said, having found there were deficiencies in the cleanliness of the rental unit, I do accept that there was some neglect on the Tenant's part.

Residential Policy Guideline 16 authorizes me to award nominal damages when no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find the Tenant was neglectful in failing to leave the rental unit reasonable and for that reason, I find the Landlord is entitled to nominal damages in the amount of \$50.00.

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.

Therefore, I find the landlord is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act t, in the amount of \$50.00 as set out below.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$3,651.94 under the following terms:

Monetary Issue	Granted Amount
a Monetary Order to the Landlord for unpaid rent under section 67 of the Act	\$7,000.00
A Monetary Order to the Landlord for unpaid utilities under section 67 of the Act	\$66.89
A Monetary Order to the Landlord for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act	\$50.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
a Monetary Order for the Tenant for the return of their deposits from the Landlord	-\$3,500.00
Interest on security the security deposits	-\$64.95
Total Amount	\$3,651.94

The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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: August 22, 2024

Residential Tenancy Branch