

DECISION

Introduction

This was a cross-application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67; and
- authorization to retain the security deposit from the tenants pursuant to section 38 of the *Act*.

The Landlord's agent (the Agent) and the Landlord's senior property negotiator (the Negotiator) attended the hearing for the Landlord.

Tenant J.M. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the parties acknowledged service of the other's 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*.

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Preliminary Matters

The Landlord named in these applications for dispute resolution are worded differently in each application for dispute resolution. I find on a balance of probabilities, that the Landlord's application for dispute resolution correctly states the Landlord's name. In accordance with section 64 of the Act, I amend the Tenant's application for dispute resolution to correctly state the Landlord's name.

Both applications for dispute resolution list Tenant J.M. Only the Tenant's application lists K.M. as a Tenant. The tenancy agreement entered into evidence states that Tenant J.M. is a Tenant and J.M. signed the tenancy agreement. The tenancy agreement does not list K.M. and K.M. did not sign it. I find, on a balance of probabilities, that K.M. is not a tenant. In accordance with section 64 of the Act, I amend the Tenant's application for dispute resolution to remove K.M. as a tenant. I shall refer to Tenant J.M. as "the Tenant" for the remainder of this Decision.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67?

Is the Tenant entitled to recover the filing fee for this application from the Landlord, pursuant to section 72?

Is the Landlord entitled to a Monetary Order for damages, pursuant to section 67?

Is the Landlord entitled to retain the security deposit from the Tenant pursuant to section 38 of the Act?

Background and Evidence

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

Evidence was provided showing that this tenancy began on July 1, 2021, with a monthly rent of \$4,600.00, due on first day of the month, with a security deposit in the amount of \$2,300.00. The Tenant testified that she paid the security deposit to the previous Landlord on June 24, 2021.

The Tenant's application for dispute resolution seeks to recover one month's rent from the landlord in accordance with section 51(1) of the Act.

The Landlord's application for dispute resolution seeks permission to retain the security deposit in compensation for the cost of disposing of personal items and furniture left at the rental property by the Tenant.

Both parties agree that the Landlord purchased the rental property on or around April 19, 2024. Both parties agree that after the Landlord purchased the rental property, they served the Tenant with a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the Notice). The Tenant testified that she received the Notice on April 23, 2024 via registered mail.

Both parties agree that shortly after the Tenant received the Notice the Tenant informed the Landlord that she planned to move out of the rental unit effective May 1, 2024. It was undisputed that 10 days notice was not provided to the Landlord. Both parties agree that the Tenant moved out of the rental unit on or around May 9, 2024.

Both parties agree that the Landlord did not provide the Tenant with one month's rent compensation following the end of this tenancy. The Tenant is seeking one month's rent, in the amount of \$4,600.00.

The Agent testified that when the Landlord served the Notice of the Tenant, the Tenant informed the Landlord that she was already in the process of moving out. The Agent testified that the Tenant would have moved out even if the Notice was not served.

The Agent testified that the Tenant did not pay the previous Landlord rent for March and April 2024 so the Landlord did not receive their portion of April 2024's rent from the previous Landlord in the sale transaction. I note that the Landlord's application for dispute resolution does not seek unpaid rent from the Tenant.

The Tenant testified that she may have provided the Landlord with her forwarding address via email. The Tenant did not present any evidence to support this testimony. The Agent testified that the Landlord did not receive the Tenant's forwarding address via email. The Tenant testified that her forwarding address was stated in this application for dispute resolution against the Landlord.

Both parties agree that the Tenants and the previous Landlord engaged in dispute resolution with the Residential Tenancy branch which resulted in a Decision dated April 30, 2024 (the Previous Dispute). The Previous Dispute adjudicated the Landlord's claims for:

- an Order of Possession for unpaid rent
- a Monetary Order for unpaid rent
- authorization to retain the Tenant's security deposit
- authorization to recover the \$100.00 filing fee

In the Previous Dispute, all of the Landlord's claims were dismissed without leave to reapply. The Decision states:

The Tenant indicated that they had paid rent to the Landlord for March and April. They provided a copy of a receipt from the Landlord for payment of rent for March. I accept this testimony which was not disputed.

The previous Landlord filed for Review consideration of the Previous Dispute which was dismissed.

The Agent testified that the Landlord left a substantial amount of furniture and personal items in the rental property which had to be disposed of before the rental property was demolished. The Landlord entered into evidence photographs showing that personal items and furniture were left in every room pictured. The Agent testified that the Landlord obtained two quotes to remove the items left behind. The quotes were entered into evidence, one for \$3,969.00 and another for \$6,030.36. The Agent testified that the Landlord opted for the cheaper quote and paid \$3,969.00 to have the property emptied out. The invoice for same was not entered into evidence.

The Tenant testified that the rental property was rented to her furnished and that the furniture she left behind was the previous Landlord's. The Tenant agreed that she left food in the fridge but testified that she did not leave other person possessions. The photographs entered into evidence from the Landlord show clothes left in closets, a stuffed animal, kids toys, pots, pans, carpets, lamps, boxes filled with various items, piles of personal items, a dog kennel, and kitchen items.

The Negotiator testified that the tenancy agreement between the Tenant and the previous Landlord does not state that furniture is included in the rent.

Analysis

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord served the Tenant with the Notice, which is a section 49 notice to end tenancy. The Tenant is therefore entitled to receive one month's compensation from the Landlord. It does not matter that the Tenant already had plans to move out or that 10 days notice was not provided. The triggering event of the Tenant to receive compensation under section 51(1) of the Act is the Landlord's service of a section 49 notice to end tenancy on the Tenant. I award the Tenant \$4,600.00 under section 51(1) of the Act. If the Landlord suffered a loss from the lack of a 10 day notice, the Landlord is at liberty to file a dispute for said loss against the Tenant.

The Agent provided testimony regarding the payment of rent. I find that the payment of rent for March and April 2024 was conclusively decided in the Previous Decision and cannot be re-heard. I note that the Landlord did not make any monetary claims for damage for loss of rent for April 19, 2024 to May 9, 2024 and I therefore decline to consider this matter further.

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

To be awarded compensation for a breach of the *Act* under section 67 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 photographs entered into evidence, I find that even if the furniture belonged to the previous Landlord, the Tenant left an exorbitant number of personal possessions at the rental property in breach of section 37(2)(a) of the *Act*.

The Landlord did not provide invoices or receipts for any removal work occurring at the rental property, only estimates. I find that the Landlord has not proved the value of the alleged loss. The Landlord did not enter into evidence proof that the quoted amount was actually paid by the Landlord to the author of the quote.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the Landlord is entitled to nominal damages of \$500.00 for the Tenant's breach of section 37(2)(a) of the *Act* as the Landlord has proved that the Tenant breached the *Act* but has not proved the value of that loss.

As the Tenant was not sure if they sent the Landlord their forwarding address via email, the serving email was not presented and the Agent testified that the forwarding address was not received by the Landlord, I find, on balance of probabilities, that the Tenant did not serve the Landlord with their forwarding address via email.

A forwarding address only provided by the Tenant on the application for dispute resolution form does not meet the requirement of a separate written notice under section 38(1)(b) of the *Act*. As the Tenant has not served the Landlord with their forwarding address in writing, the Tenant is not yet entitled to recover the security deposit from the Landlord.

As the Tenant was successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the Landlord in accordance with section 72 of the *Act*.

I find that the Landlord's award of nominal damages of \$500.00 is to be offset against the Tenant's award of \$4,700.00 for a total award to the Tenant of \$4,200.00. As the

Landlord is not owed any additional funds, I dismiss the Landlord's claim to retain the security deposit under section 38 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$4,200.00** under the following terms:

Monetary Issue	Granted Amount
a monetary order to the Tenant for damage and compensation under section 51(1) and section 67 of the Act	\$4,600.00
a monetary order to the Tenant for recovery of the filing fee under section 72 of the Act	\$100.00
a monetary order to the Landlord for nominal damages under section 67 of the Act	-\$500.00
Total Amount	\$4,200.00

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme 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