

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 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
- A Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on May 31, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

The Tenant advised they served the Landlord via Canada Post. The Tenant provided a copy of the Canada Post tracking number which showed that notices were left for the Landlord, but the package was never picked up. The Landlord listed their address for service on their Proceeding Package as the rental address and the Tenant testified, they served the Proceeding Package to the rental address.

As stated in Policy Guideline 12, where a document is served by Registered Mail the refusal of a party to accept or pick up the item, does not override the deeming provision. From the testimony of the Tenant and evidence, I find they served the Landlord in

accordance with s.89 of the Act. The Landlord was served with the registered mail package, on the fifth day after the package was mailed.

Service of Evidence

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.

The Landlord testified they did not receive the Tenant's evidence. The Tenant advised the evidence was served with the Proceeding Package. As stated in Policy Guideline 12, where a document is served by Registered Mail the refusal of a party to accept or pick up the item does not override the deeming provision. As such, I find that the evidence was properly served on the Landlord. Additionally, the Tenant provided copies to the Tenant before the hearing proceeded via email. Therefore, I will consider the evidence submitted by the Tenant.

Preliminary Matters

- Amended application to Withdraw Claim for Unpaid Rent

The Landlord advised they are not seeking unpaid rent and are only claiming for damages and strata fines. As such, I find that this amendment does not prejudice either party. In accordance with section 64 (3)(c) of the Act, I have permitted the application to be amended and this issue is withdrawn.

- Amend Application to Add Claims

Both parties wanted to amend their application to seek additional costs. The Landlord wanted to amend the Landlord's application to seek the cost of a new mail key. The Tenant wanted to amend the Tenant's application to seek one month of free rent under section 51(1) of the Act. Given that the other party was not aware of these claims against them, I decline to amend the applications to include these additional claims. The parties are free to file new applications seeking these claims.

Issues to be Decided

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

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

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?

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

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

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.

Evidence was provided showing that this tenancy began on August 1, 2023, with a monthly rent of \$2,400.00, due on first day of the month, with a security deposit in the amount of \$1,200.00, paid August 1, 2023. The Tenant vacated the rental unit April 30, 2024.

The Landlord is seeking damages, compensation and requested to retain the security deposit. The Tenant applied to have the security deposit returned.

Condition Inspection Report (CIR)

The parties advised that no move-in or move-out CIR was completed. The Tenant advised they were never asked to complete a move-out CIR. The parties advised the Tenant provided their forwarding address on April 30, 2024, by Canada Post and the tracking number shows it was delivered May 6, 2024.

Damages

The Landlord is seeking \$900.00 for the Landlord's time removing tape from the ceiling and throwing away items left behind by the Tenant. The Landlord argued that there was damage to the walls, but the Landlord is not seeking those costs. The Landlord also argued they did not provide receipts and the \$900.00 was an estimate of how much the Landlord's time costed.

The Tenant's position is that they did not damage the rental unit and no move-in or move-out CIR was completed. The Tenant provided photographs of the rental unit after they vacated.

Compensation

The Landlord is seeking \$800.00 in strata fines. The Landlord argued they received Bylaw fines from the Strata Corporation based on complaints about the Tenant but choose not to dispute them. The Landlord argued they received \$800.00 in strata fines. Copies of the Bylaw Fine letters were submitted as evidence. The Strata Fine Letters stated "the Strata Corporation will impose a fine for each contravention of the bylaw(s) or rule(s) should you choose not to contest the contents of this letter. The currently contemplated fines associated with the above infraction(s) Total: \$200.00".

The Tenant argued there was no opportunity for them to dispute the Bylaw fines as that was the Landlord's responsibility. Both parties advised that a Strata Form K was never signed.

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.

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report. Section 32(3) of the Act states that a tenant 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.

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 before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has failed to establish a claim for damage to the rental unit or common areas.

The Landlord has failed to provide any evidence to prove the amount or value of the loss. As such, they failed element 3 required to establish a claim for damages.

Section 21 of the Regulation states that "in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has preponderance of evidence to the contrary".

Additionally, given that the Landlord has not provided any condition inspection report completed at the start or the end of the tenancy and because the Landlord has not provided any preponderance of evidence regarding the state of repair and condition of the rental unit at the start of the tenancy, the Landlord has not proven any breach of the Act.

For the above reasons, the Landlord's application for a Monetary Order for money owed for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

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

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

While the strata fine letters were provided by the Landlord, the Landlord did not provide any evidence to support that the fines were issued. The strata fine letters stated “the Strata Corporation will impose a fine for each contravention of the bylaw(s) or rule(s) should you choose not to contest the contents of this letter. The currently contemplated fines associated with the above infraction(s) Total: \$200.00”. However, there is no evidence that a fine was imposed after the letters were issued.

Section 146 of the *Strata Property Act* requires owners of strata units to provide their renters with a “form K”, which is a notice of tenants’ responsibilities and notifying tenants of their obligation to comply with strata bylaws. Additionally, based on the testimony of the parties a Strata Form K was never signed by the Tenant. Given that the Landlord is required to provide the bylaws to the Tenant under the *Strata Property Act*, I do not find that the Form K became part of the tenancy agreement as the Landlord failed to provide the Tenant with a copy of the bylaws and did not sign the Form K.

For the above reasons, the Landlord's application for a Monetary Order for money owed for compensation under the Act, regulation or tenancy agreement 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 award requested?

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. As the forwarding address was provided on April 30, 2024, and received May 6, 2024 and the Landlord made their application on May 24, 2024, I find that the Landlord did not make their application within 15 days of the forwarding address being provided.

In light of the above, and pursuant to section 38(6) of the Act, I find that the Tenant is entitled to an award of double of the security deposit paid to the Landlord. Furthermore, the Landlord did not complete a move-in or move-out CIR and did not provide copies to the Tenant, as such the Landlord breached section 23 and 35 of the Act and extinguished their right to claim against the security deposit for damages.

I find that The Landlord must pay the Tenant double the amount of the security deposit, which is \$2,400.00. Pursuant to section 4 of the Regulations, the Tenant is also entitled to \$30.39, which is the interest accumulated on 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 or the Tenants entitled to recover the filing fee for their application?

As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the filing fee paid for this application under section 72 of the Act.

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,530.39** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit and pet damage deposit under sections 38 and 67 of the Act	\$1,200.00
double of the security deposit under section 38(6) of the Act	\$1,200.00
interest accumulated pursuant to section 4 of the Regulation	\$30.39
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$2,530.39

The Tenant is provided with a Monetary 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.

The Landlord's application is dismissed in its entirety.

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 19, 2024

Residential Tenancy Branch