

DECISION

Introduction

This hearing dealt with the Landlords' 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
- 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 Tenant XT's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing was previously adjourned to allow the parties to re-serve evidence.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlords were served on June 14, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

I find that the Tenants were served on July 6, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

Service of Evidence

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act. During the hearing Tenant XT advised they did not receive a couple photographs mentioned by the Landlords. As Tenant XT advised they did not receive those photographs I have not considered them.

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlords in accordance with section 88 of the Act.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to an order regarding the Tenants dispute of an additional rent increase by the Landlords?

Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the Tenants 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 15, 2023, with a monthly rent of \$1,800.00, due on the 15th day of the month, with a security deposit in the amount of \$900.00, paid August 15, 2023. The tenancy ended June 30, 2024. The parties had not written tenancy agreement.

The Landlords are seeking compensation for unpaid rent, damages, and authorization to retain the security deposit. Tenant XT filed a cross-application seeking compensation, disputing a rent increase and asking for aggravated damages.

Landlords' Application

Condition Inspection Reports (CIR)

The parties advised no move-in CIR was completed when the Tenants moved in. The Landlords' advised they posted a letter on the rental unit door offering the Tenants 2 opportunities to conduct and move-out inspection, but the Tenants did not respond. A copy of the letter was provided. Tenant XT argued the letter was posted June 25, 2024; however, the Tenants vacated the rental unit and moved back to Toronto on June 24, 2024. Tenant XT advised they did not tell the Landlords they were leaving early. The parties advised the Tenants provided a forwarding address in early June 2024.

Unpaid Rent

The Landlords' position is that the Tenants did not pay rent for May 15, 2024 until June 30, 2024. The Landlords are seeking \$2,700.00 in unpaid rent for that period.

Tenant XT argued they paid \$2,250.00 in cash to Landlord ZX on June 14th. Tenant XT provided a copy of a translated rent receipt from June 14, 2024. Tenant XT also provided copies of previous rent receipts. Tenant XT argued they paid \$2,250.00 because \$1,800.00 covered June 15, 2024 to July 14, 2024 and then an additional \$450.00 for the rest of July 2024. Tenant XT argued they paid until the end of July 2024 because they thought they would need extra time to move out. Tenant TX argued they had previously overpaid \$1,350.00 in utilities which covered May 2024 rent.

The Landlords argued the Tenants always paid by e-transfer and never by cash and the rent receipt is forged and does not match the other rent receipts given by the Landlords. The Landlords argued they never received any cash from the Tenants and that after the June 2024 RTB hearing there was hostility between the parties so they never spoke in person and only communicated via Canada Post or written letters.

Damages

The Landlords are seeking the following compensation for damages:

Item	Description	Amount
1	Stove	\$250.00
2	Washing Machine Repair	\$50.00
3	Repair and Clean Fridge	\$120.00

4	Door and Window Lock Repair	\$160.00
5	Cleaning	\$120.00
	TOTAL	\$700.00

#1 Stove

The Landlords' position is that the Tenants cut the electrical wire on the stove and burnt the elements on the stove top. A photograph was provided. No receipt was provided, and the cost was an estimate for a used stove.

The Tenants' position is that they did not cut any wire or do any damage.

#2 Washing Machine Repair

The Landlords' position is that the Tenants cut the wire on the washing machine. The Landlords advised they do not have a receipt as a friend did the repair.

The Tenants' position is that they did not cut any wire

#3 Repair and Clean Fridge

The Landlords' position is that the Tenants cut the electrical wire to the fridge, the lightbulb was burnt out and the Landlords had to clean the fridge. No receipt was provided.

The Tenants' position is that they did not do this.

#4 Door and Window Lock Repair

The Landlords' position is that the Tenants put glue inside the keyhole, extra locks on the windows and doors that the Landlords had to have this removed. No receipts were provided, and the Landlords argued they looked up prices on Canadian Tire and HomeDepot.

The Tenants' position is that they did not do this.

#5 Cleaning

The Landlords' position is that they spent around 6 hours cleaning the rental unit after the Tenants moved out.

The Tenants' position is that they cleaned the rental unit before vacating.

Tenant XT's Application

Monetary Compensation

Tenant XT is seeking \$3,000.00 in compensation because the Landlords did not do anything right. When asked how Tenant XT got the amount of \$3,000.00, Tenant XT testified a friend told them to claim this amount. Tenant XT argued the Landlords tried to increase rent, put flooring over a dirty carpet, made noise at night and turned off the water in the bathroom for 2 days.

The Landlords' position is that the Tenants never complained of any noise, or other issues during the tenancy. The Landlords' advised they turned off the hot water for 1.5 days because the Landlords discovered a leak, and the Landlords did not want the hot water tank running. The Landlords argued the hot water was fixed 1.5 days later.

Dispute of Rent Increase

The position of Tenant XT is that the utilities were included in rent, but in December 2023 the Landlords requested the Tenants pay \$300.00 towards utilities and then in February 2024 \$310.00 towards utilities and then in April 2023 \$710.00 towards utilities. Tenant XT argued they paid these amounts because the Landlords threatened to evict them. Tenant XT provided copies of WeChat messages with the Landlords about the utility payments and copies of the e-transfer amounts. The WeChat from the Landlords on December 10, 2023, stated "We included water, electricity, and gas in the rent under the premise of reasonable use of utilities by tenants. As such, you have to bear the outrageous additional expenses yourself as these are unreasonable uses! The water and electricity costs increased by 335 Canadian dollars compared to the same period last year. Please pay me the rent plus 300 Canadian dollars before December 15".

The Landlords' position is that originally utilities were included in rent, but after 3 months the utilities costs were too high, and the Landlords asked the Tenants to contribute to the utilities. The Landlords argued the Tenants had no problem paying the utility amounts.

Aggravated Damages

Tenant XT is seeking \$2,000.00 in aggravated damages because Tenant XT claimed the Landlords are disgusting people. When asked how Tenant XT got the amount of \$2,000.00, Tenant XT testified a friend told them to claim this amount.

The Landlords' position is that the Tenants owe the Landlords' money for damages to the rental unit.

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 a responsibility to provide evidence over and above their testimony to prove their claim.

Are the Landlords entitled to a Monetary Order for unpaid utilities?

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.

I find that the Tenants did not pay rent from May 15, 2024 until June 30, 2024. I do not accept the testimony of Tenant XT that they paid rent and I do not accept the rent receipt from June 14, 2024 for \$2,250.00. I find that the rent receipt does not match the other 6 rent receipts that Tenant XT provided as evidence. All the other rent receipts are on lined paper and the rent receipt from June 14, 2024 is on blank paper. Additionally, all other rent receipts list the period that rent was paid for; however, the rent receipt from June 14, 2024 only states the amount that was paid. The Tenants also always paid by e-transfer, but Tenant XT claimed they made this payment in cash.

In contrast the Landlords argued the Tenants never paid in cash and the parties did not speak after the previous RTB hearing given the hostility between the parties.

I find the Landlords' version of events is the account which a practical and informed person would readily recognize as reasonable and reliable. Where the parties' version of events differs, I prefer the Landlords' version.

As such, I accept the Landlords' version of events that the Tenants did not pay rent from May 15, 2024 until June 30, 2024.

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 Landlords are entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$2,700.00.

Are the Landlords 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

The Landlords did not provide any receipts to support the amounts they are claiming. The Landlords have failed to prove the amount or value of the damage or loss. As such, I decline to award any compensation for damages.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

Are the Landlords' entitled to retain all or a portion of the Tenants' 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 early June 2024, and the tenancy ended June 30, 2024, and the Landlords made their application on July 1, 2024, I find that the Landlords did make their application within 15 days of the tenancy ended.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the testimony of both parties, I find that the Landlords did not complete a move-in CIR and did not provide copies to the Tenants as required under sections 23. I find that the Landlords did offer the Tenants 2 opportunities to do a move-out inspection; however, the Tenants had already moved by the time the notice was posted. In any event, the Landlords breached their obligations first as they failed to complete a move-in CIR. As such, I find that the Landlords extinguished their right to claim against the security deposit, as per sections 24(2) of the Act.

Pursuant to section 38(1) of the Act, the Landlords would have had 15 days from the later of the end of the tenancy in writing to repay the security deposit or file a claim against it. However, the Landlords had extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24 and 36 of the Act and therefore the Landlords were required to claim against the security deposit for something other than damage or return the security deposit to the Tenants within the 15 days of the later of the end of the tenancy or the date the Landlords received the

Tenants' forwarding address in writing. Since the Landlords claimed for unpaid rent, the Landlords did not breach section 38(1) of the Act and the deposit is not doubled.

Under section 72 of the Act, I offset any amount the Tenants owe the Landlords from the Tenants' security deposit of \$900.00, plus interest.

Is the Tenant entitled to an order regarding the Tenants dispute of an additional rent increase by the Landlords?

Tenant XT is disputing the utility amounts they paid in December 2023, February 2024 and April 2024 of \$1,350.00. Tenant XT provided e-transfers to support the amounts paid.

The parties had no written tenancy agreement but based on the testimony of both parties, I find that the agreement at the beginning of the tenancy was that utilities were included in rent.

Section 14(2) of the Act, states that a tenancy agreement can be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Based on the WeChat provided by Tenant XT, I find that the Landlords unilaterally decided that utilities were no longer included in rent. On December 10, 2023, the Landlords messaged the Tenants and advised them they needed to pay \$300.00 plus the rent amount by December 15, 2023. While the Tenants did pay these amounts, I find that the parties did not both agree to make utilities separate from rent. As such, I find that the Landlords were not entitled to unilaterally change the tenancy agreement and start charging the Tenants for utilities.

As such, I award Tenant XT a Monetary Order of \$1,350.00. Based on section 72 of the Act, this amount will be deducted from any amount the Tenants owe to the Landlords.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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

- the landlord 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 tenant acted reasonably to minimize that damage or loss

Based on the testimony and evidence of both parties I find that Tenant XT has failed to prove that the Landlords breached the Act or that any loss or damage resulted from the Landlords' failure to comply. There is no evidence to support that the Tenants ever advised the Landlords of any noise complaints, smell or issue with not having access to hot water. Additionally, Tenant XT testified they are seeking \$3,000.00 because a friend

suggested that amount. As such, I find that Tenant XT has also failed to prove the value or amount of the damage or loss.

For the above reasons, 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.

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Tenant XT advised they filed this claim seeking aggravated damages.

According to Policy Guideline #16, aggravated damages "may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence". Tenant XT has provided insufficient evidence to establish that any significant damage or loss occurred or that it was caused deliberately or through negligence.

As such, I decline to award any amount for aggravated damages. I dismiss Tenant XT's claim for a reduction in rent for repairs, services or facilities agreed upon but not provided, without leave to reapply.

Are the Landlords or the Tenant entitled to recover the filing fee for their application?

As both parties were partially successful, I find the filing fee amounts awarded would be offset against each other. As such, I decline to award any amount for the filing fee for either party.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$427.36** under the following terms

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act to the Landlords	\$2,700.00
authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$922.64
a Monetary Order for an illegal rent increase under section 43 of the Act to the Tenants	-\$1,350.00

Total Amount	\$427.36
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The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

The Landlords are authorized to retain the Tenants' security deposit, plus interest, as partial compensation, under section 72 of the Act.

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 27, 2024

Residential Tenancy Branch