

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
- 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 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 compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord's Agent T.K. attended the hearing for the Landlord.

Tenant S.M. attended the hearing for the Tenant.

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 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

The Landlord's Agent T.K. testified that they did not serve or upload any evidence for the Tenant's cross application.

The Landlord's Agent T.K. testified that they received the Tenant's Notice of Dispute Resolution Proceeding and Evidence. I find that the Landlord was duly served with the materials in accordance with section 88 and 89 of the Act.

Issues to be Decided

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

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

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

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

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

Background and Evidence

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

The parties were present at a previous hearing where the parties settled and a settlement Decision dated March 26, 2024, was released. The File Number of this previous Decision is listed on the cover page of this Decision.

Evidence was provided showing that this tenancy began on September 1, 2022, and that most recently the monthly rent was \$4,692.00 and due on the first day of the month. The Tenant submitted a signed and completed copy of the Landlord's Notice of Rent Increase effective December 1, 2023.

The parties agreed that the tenancy ended on March 31, 2024, by way of the Landlord's Two Month Notice to End Tenancy (the Two Month Notice). The rental unit is an apartment unit, and the Tenant had exclusive possession of the rental unit. The Landlord Agent T.K. testified that they did not complete a condition inspection report at the beginning of the tenancy, nor at the end of the tenancy.

The Landlord's application requested compensation in the amount of \$14,900.00 for damage caused by the Tenant. The Landlord's Agent T.K. declared that the Tenant damaged the microwave, the refrigerator, the dishwasher, the window blinds, the washing machine, the kitchen cabinets, the drywall, the flooring and contributed to the

mouldy condition of the rental unit's balcony. T.K. testified that if there was no monetary limitation on the application, the total amount requested for damage to the rental unit would be \$19,444.00 plus goods and services tax.

T.K. submitted a monetary order worksheet for the damages, the total monetary claim for damages calculated on the monetary order worksheet is \$21,484.58. T.K. also submitted a twelve paged word document containing several pictures of the condition of the rental unit at the end of the tenancy, three invoices with corresponding payments from the one contractor hired to perform the floor, refrigerator, drywall, sink, cabinets and microwave repair and replacements. T.K. also submitted a \$2,136.75 quote from a window blind company. The Tenant responded and raised the issue that the Landlord did not complete condition inspection reports at the beginning or at the end of the tenancy and that the Landlord has met the burden of proof to demonstrate that the Tenant caused the damages. The Tenant also raised the issue that the rental unit is in a sixteen-year-old building.

The Landlord's Agent T.K. also requested compensation in the amount of \$20,000.00. T.K. testified that the Landlord intended to move into the rental unit but was prevented from doing so because the Tenant did not move out on time. T.K. stated that this forced the Landlord to rent a place last minute. T.K. agreed that the Tenant did not breach the Act or the tenancy agreement but emphasized that the Landlord incurred expenses in the form of last-minute accommodation and rent payments for March and April of 2024.

The Tenant cross application requested compensation in the amount of \$4,692.00 under section 51 of the Act.

The Tenant testified that while waiting for the hearing on the previous application, where the Tenant disputed the Landlord's Two Month Notice, they started searching for a place to stay and found accommodation on February 15, 2024. The Tenant emphasized that parties did not reach a mutual agreement to cancel the March 26, 2024, participatory hearing, nor did the parties reach a mutual agreement regarding an early end to the tenancy, and as a result the previous hearing occurred as scheduled.

The Tenant declared that the Landlord's Two Month Notice was not cancelled at that hearing, and that the Tenant is entitled to one month of free rent under the Act. The Tenant submitted a copy of their bank statement from March of 2024, a copy of their email money transfer of March 2024's rent to the Landlord, a copy of the Landlord's Notice of Rent Increase, a copy of an email dated April 18, 2024, in the file titled "email-23.png". A passage from this email reads:

"I am owed 4692\$ [sic] from the eviction as part of the one month rent compensation..."

The Landlord's Agent T.K. responded and testified that they did not return March of 2024's rent to the Tenant.

Analysis

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

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.

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 of the above conditions must be satisfied in order to be granted compensation.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord is not entitled to a Monetary Order for compensation due to the damage caused by the Tenant at the rental unit.

I find that the Landlord has not provided a persuasive or accurate version of events to satisfy the third condition of the four-point test, specifically to demonstrate the value of the damage or the loss.

For example, the Landlord's monetary order worksheet requests for compensation in the amount of \$21,484.58, which is an entirely different amount from the Landlord's request for compensation in the amount of \$19,444.00 at the hearing. I find the Landlord did not provide any meaningful submissions on the discrepancies, nor did the Landlord provide any meaning explanation on what may have accounted for the discrepancies.

Moreover, in the absence of any condition inspection reports, I find that the condition of the rental unit at the beginning of the tenancy, and at the end of the tenancy not easily determinable, and that this did not contribute to the Landlord's claim that the Tenant violated the Act, regulations or the tenancy agreement.

Consequently, I dismiss the Landlord's request for compensation for damage to the rental unit, without leave to reapply.

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

Again, awards for compensation are provided in section 7 and section 67 of the Act. The same four-point test is to be applied, and all four conditions of the test must be satisfied in order to be granted compensation.

In this case, the Landlord essentially requested for compensation because the Landlord incurred loss in the amount of \$20,000.00 by having to find accommodation on short notice when the Tenant exercised their right under section 49 of the Act to dispute a Two Month Notice to End Tenancy for Landlord's Use.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord is not entitled to a Monetary Order for compensation for loss or damage under the Act, the regulation or the tenancy agreement.

I find that the Landlord may not claim against the Tenant for exercising their rights as a tenant under section 49 of the Act to dispute the Landlord's Two Month Notice. I find it more likely than not that the Landlord incurred this loss due to their own decision-making, such as plans to move into the rental unit prior to being given a conclusive outcome regarding the end date of the tenancy from the parties previous Residential Tenancy Branch dispute hearing.

While I accept that the Tenant did not occupy the rental unit since February 15, 2024, I find that that the Tenant did not relinquish exclusive possession of the rental unit as both parties were waiting for the scheduled previous hearing and simultaneously awaiting the outcome of that hearing.

Based on the above, I find that the Landlord did not sufficiently demonstrate that the Tenant violated the first condition of the four-point test and the test fails.

Accordingly, I dismiss the Landlord's request for compensation for monetary loss, without leave to reapply.

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

As the Landlord was not successful on any of the issues in their application, I decline to award the Landlord the cost of the filing fee from the Tenant. The Landlord's request for the filing fee is dismissed, without leave to reapply.

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

Section 51(1) of the Act states that a tenant who receives a notice to end tenancy for landlord's use under section 49 of the Act, 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.

Based on the evidence, and the Decision dated March 26, 2024, I find that it more likely than not that the tenancy ended based on the Landlord's Two Month Notice.

Again, awards for compensation are provided in section 7 and section 67 of the Act. The same four-point test is to be applied, and all four conditions of the test must be satisfied in order to be granted compensation.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Tenant has established their claim for compensation, specifically that the Tenant did not receive the equivalent of one month of rent payable under the tenancy agreement and under section 51(1) of the Act.

In addition, I note that the Landlord agreed that they did not return March of 2024's rent to the Tenant.

Based on the above, I find that the Landlord breached section 51(1) of the Act by failing to return the equivalent of one month's worth of rent under the tenancy agreement, and that the Tenant has incurred a loss for the Landlord's breach. I find that this satisfies the first and second condition of the four-point test.

I assign significant weight to the copy of the Notice of Rent Increase, I find that this document demonstrates the rent around the period at the end of the tenancy was \$4,692.00. I accept the Tenant's evidence, specifically the bank statements and email money transfer records that the Tenant did in fact pay for March of 2024's rent. I find that this satisfies the third condition of the four-point test, the value of the loss.

I find that the Tenant acted reasonably to mitigate the loss by requesting the Landlord to return the one month of rent as required when a tenancy ends by way of a two month notice to end tenancy for landlord's use of property. I assign significant weight to the Tenant's email dated April 18, 2024, where the Tenant communicated their request to the Landlord. I find that this satisfies the fourth point of the four-point test.

Based on the above, I find that the Tenant has sufficiently satisfied the four-point test and the test succeeds. Consequently, I grant the Tenant's request for compensation under section 51(1) of the Act.

Therefore, I find that the Tenant is entitled to a Monetary Order in the amount of \$4,692.00.

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

As the Tenant was successful in their cross application, I find that the Tenant is entitled to recover the filing fee for this application from the Landlord under section 72 of the Act.

Under section 72 of the Act, I find that the Tenant is entitled to a Monetary Order in the amount of \$100.00 for the cost of the filing fee.

Conclusion

The Landlord's application is dismissed in its entirety, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of \$4,792.00 under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for compensation for loss under section 51(1) and section 67 of the Act	\$4,692.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$4,792.00

The Tenant is provided with this Monetary Order in the above terms and the Landlord(s) must be served with it. Should the Landlord not 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.

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: September 23, 2024

Residential Tenancy Branch