

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenants under the *Residential Tenancy Act* (the "Act").

The Landlord's Application for Dispute Resolution, filed on June 11, 2024, is for:

- 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 Tenants' 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 Tenants under section 72 of the Act

The Tenants' Application for Dispute Resolution, filed on July 14, 2024, is for:

- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act; and

Landlord L.L., Landlord's Agent P.D. attended the hearing for the Landlord.

Tenant V.C.N.V., Tenant D.E.J.D. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

The Landlord acknowledged service of the Tenants' evidence, and I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

The Tenants argued that the Landlord's evidence should not be allowed. The Landlord testified that they e-mailed their evidence to the Tenants on June 10, 2024, before they made their application. The Tenants stated that they were not aware that the Landlord would rely on those on files as evidence, because they were sent to the Tenants before the Landlord served them with the Proceeding Package.

The Tenants relied on Rule of Procedure 3.13 which states that the applicant's evidence and application should be provided to the respondent in a single package. The Tenants testified that because they were unaware that these files would be used as evidence, they did not have sufficient time to prepare to respond to the Landlord's evidence.

Under Rules 2.5, and 3.1, to the extent possible, an applicant must serve the respondent with the Proceeding Package and the evidence which the applicant intends to rely on within three days of the Proceeding Package being made available by the Residential Tenancy Branch.

In accordance with rule 3.17, I considered whether this was new and relevant evidence unavailable at the time the application was made or when the tenant served and submitted their original evidence. I determined the acceptance of the Landlord's evidence would unreasonably prejudice the Tenants and result in a breach of the principles of natural justice.

Issues to be Decided

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 the Tenant's security deposit, or are the Tenants entitled to its return?

Is the Landlord entitled to recover the filing fees for their Application?

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 November 18, 2023, with a monthly rent of \$2,800.00, due on first day of the month, with a \$1,400.00 security deposit and a \$1,400.00 pet damage deposit. The Tenants vacated the rental unit on June 10, 2024.

The Landlord claims that the Tenants removed furniture from the rental unit that was the Landlord's property because the rental unit was a furnished rental unit. The Landlord claims damages for the estimated replacement cost.

The Landlord did not complete a condition inspection report at the start or at the end of the tenancy.

The Tenants testified that near the start of the tenancy they texted the Landlord about what they should do with the furniture that was left in the rental unit. The offered to 'deal with it' if the Landlord did not want to remove the furniture. The Landlord texted back "I will leave it."

The Tenants testified that they disposed of some of the furniture in the rental unit at the start of the tenancy, and then took most of it with them when they left. The Tenants testified that after the Landlord texted them, the Tenants realized they had made a mistake by taking the furniture. The Tenants texted the Landlord stating that the Landlord could come and retrieve the furniture from them, but due to a recent surgery the Tenants could not return the furniture themselves.

The Landlord testified that she refused to pick up the furniture because the Tenants no longer had all of the furniture, and because the Landlord was worried about sanitization of the furniture. The Landlord testified that she had not replaced the furniture yet, and she provided what she believed to be an under-estimate of the replacement cost of the furniture.

Analysis

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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Section 23 of the Act indicates that it is the Landlord's responsibility to ensure that a condition inspection report is completed at the start of a tenancy. The Landlord testified that she did not complete a condition inspection report with the Tenants.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the Landlord has put herself in a position where she cannot prove, on a balance of probabilities, the loss or damage caused by the Tenants when the tenancy ended. Though the Landlord's testimony bears some weight,

the Landlord has not met the burden of proof to show me which furniture was included in the rent for the Tenants use during the tenancy.

Further, the text message conversation between the Landlord and Tenant near the start of the tenancy concerning the furniture was vague. The Landlord had the opportunity during that conversation to clarify which furniture was included in the rent, and that it must stay at the rental unit, but failed to do so.

The Landlord did not provide receipts to show that she replaced the furniture.

I find that the Landlord has not proven the loss of her furniture occurred as a result of the Tenants breaching the Act, regulation or Tenancy Agreement, because the furniture is not itemized in the tenancy agreement nor in a condition inspection report. I further find that the Landlord has not proven that she has suffered a loss as the Landlord has not replaced the furniture, and only supplied estimate values for replacements.

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

Is the Landlord entitled to retain the Tenant's security deposit, or is the Tenant entitled to its return?

Under section 24 of the Act, the right of the Landlord to claim against the Tenants' security deposit is extinguished if the Landlord does not complete the condition inspection report and give the Tenants a copy of it in accordance with the regulations.

During the hearing the Landlord testified that she did not complete a condition inspection report at the start of the tenancy. The Landlord's right to claim against the Tenant's security deposit has therefore been extinguished, and I dismiss the Landlord's claim to retain the Tenant's security deposit without leave to reapply.

Section 38(5) of the Act states that when the Landlord's right to claim against the security deposit is extinguished, the Landlord may not make a claim against it. Further Policy Guideline 17 states that an arbitrator will award the return of double the deposit if the Landlord has claimed against the deposit for damage to the rental unit and the Landlord's right to make such a claim has been extinguished under the Act.

The Tenants' security deposit and pet damage deposit together are \$2,800.00. The interest that has accrued on the Tenants' security deposit is \$57.60 to the date of the hearing. The Tenants applied for double their deposits and double the interest. However, Policy Guideline 17 states the interest is calculated on the original security deposit amount, and it is not doubled.

As I have dismissed the Landlord's application to retain the security deposit due to the extinguishment of their right to keep it under the section 24 of the Act, I find that the

Tenant is entitled to a monetary award in the amount of \$5,657.60, for double the return of the total security and/or pet damage deposit, plus interest.
($\$2,800.00 \times 2 + \$57.60 = \$5,657.60$)

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$5,657.60** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenants for the return of double their deposit plus interest from the Landlord ($\$2,800.00 \times 2 + \$57.60 = \$5,657.60$)	\$5,657.60
Total Amount	\$5,657.60

The Tenants are 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).

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

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

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 30, 2024

Residential Tenancy Branch