

## **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 Tenants Application for Dispute Resolution under the the Act for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage 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

The Landlord HS attended the hearing.

MS, the daughter and agent of the Tenant also attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord attempted to serve the Tenant by registered mail. The Tenant testified that it was sent to his neighbour's address. However, the Tenant consented to having the Landlord's application heard.

I find that the Landlord is deemed served on July 27<sup>th</sup>, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service, and the Landlord acknowledged such service.

## **Preliminary Matters**

The Landlord objected to the Tenant's service of evidence. I admit the Tenant's evidence of the provision of the forwarding address. As this is correspondence between the parties, the Landlord would have known of it, and I find there is no prejudice to the Landlord in admitting such evidence. I have not referenced or considered the remainder of the Tenant's documentary evidence, and so I do not find it necessary to consider whether it should be admitted.

## **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for unpaid rent?

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? If not, 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 either party entitled to recover their filing fee for this application from the other party?

## **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 October 1<sup>st</sup>, 2022, with a monthly rent of \$4,400.00, due on first day of the month, with a security deposit in the amount of \$2,150.00.

The Landlord testified that, after the Tenant did not pay rent in May, they issued a 10 Day Notice for Unpaid Rent that was not disputed by the Tenant, and the Landlord obtained an Order of Possession.

The Landlord then enforced the Order of Possession by obtaining a Writ of Possession and having that writ enforced by bailiffs on June 3<sup>rd</sup>, 2024.

The Landlord testified that, after they regained possession, the unit was uncleaned and damaged. The Landlord had the unit professionally cleaned. The Landlord testified that she had to throw away the BBQ, that there were stains on the stove and the

countertops, that the caulking was mouldy in two bathrooms, and that some furniture was damaged. The Landlord submitted photographs in support.

The Landlord testified that during the tenancy, the Tenant requested that the Landlord replace some lightbulbs, and insisted on a professional doing so. The Landlord acquiesced, but stated at the time that they would charge the Tenant for doing so. An electrician's invoice for the work was submitted.

The Landlord testified that although they attempted to re-rent the unit for July 1<sup>st</sup>, they were unable to and only re-rented the unit for August 1<sup>st</sup>. The Landlord testified that listed the rental unit on Craigslist almost immediately after having the unit cleaned, about June 10<sup>th</sup>.

MB testified that the rental unit had been fully furnished, and that they only had their personal items in the unit; but when they were evicted, they were given some of the older furniture which did not belong to them.

MB testified that the Tenant provided the Landlord his forwarding address on June 5<sup>th</sup>, and provided a copy of the email and a proof of service form.

## **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 unpaid rent?**

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.

Based on the evidence before me, I find that the Landlord has failed to establish a claim for unpaid rent.

As the tenancy had ended pursuant to a 10 Day Notice on May 15<sup>th</sup>, no rent was due for June. The claim of the landlord is for damages and will be considered under that heading.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

### **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

Although a claim for cleaning is a claim for damages, rather than damage to the rental unit, I will discuss it here, as it is intertwined with the Landlord's claim for damage to the rental unit.

Under section 37 of the Act, a Tenant must leave a rental unit reasonably clean and undamaged. I have considered the Landlord's testimony and inspected the photographic evidence provided, and I find that while the Landlord has proven some damage to the rental unit, she has not demonstrated that the rental unit was not left reasonably clean. Most of the Landlord's complaints about the rental unit centre upon damage, rather than a lack of cleanliness. The deep stains to the countertop, blinds and furniture appear to me to be more in the order of damage than uncleanliness – they are the kinds of things that persist even after cleaning.

I therefore find that the Landlord is entitled to the costs claimed in respect of repairs, namely \$56.53.

For the above reasons, I grant Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act in the amount of \$56.53.

**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 established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

I find that the Tenant remained in possession of the rental unit after the date of the Order of Possession had elapsed, and that the Landlord was entitled to obtain a Writ of Possession and have the Tenant evicted by bailiffs. As these costs are due to the Tenant's failure to abide by the Act and the Order of Possession, I find the Landlord is entitled to compensation. The cost of the Writ of Possession was \$120.00; the cost of the bailiffs and subcontractors was \$3,902.71, and I find the Landlord is entitled to recover these amounts from the Tenant.

The Landlord claims for rent for June. In substance, however, this is a claim for damages due to the Tenant not leaving in conjunction with the Order of Possession. Although the Landlord knew they were having the Tenant evicted, they did not list the unit for re-rent until approximately June 10<sup>th</sup>, and then only listed it on Craigslist. Further, the Landlord evinced substantial uncertainty as to when the rental unit was re-rented, and no documentary evidence as to when the unit was listed for rent was submitted. While I accept the Landlord's evidence that they listed the unit for rent sometime after the unit was cleaned, I cannot put reliance on the June 10<sup>th</sup> date.

I find that the delay between the removal of the Tenant on June 3<sup>rd</sup> and the listing of the unit is inconsistent with a reasonable effort to mitigate loss. There was no necessity to wait until the unit was cleaned before listing it for rent, and by doing so the Landlord lost any substantial chance of re-renting it for June 15<sup>th</sup> or earlier. As I have found the Landlord did not mitigate her losses, I find that the Landlord cannot recover for the whole month of June. However, the Tenant was present in the unit on June 3<sup>rd</sup> – and so the Tenant is liable for overholding to the Landlord. Overholding is calculated on a per diem rate, which in this case is \$144.65 per day. I therefore find the Landlord is entitled to damages in the amount \$433.98

The Landlord also claims \$600 related to deductions she allowed from rent for repairs, but for which no invoices were ever submitted. The Landlord did not show contemporaneous demands for invoices, and I have no evidence to find that the Tenant obtained these deductions by fraud. I find the Landlord cannot recover these amounts.

During the tenancy, a tenant is responsible for replacing light bulbs, a point laid out in Policy Guideline 1 : Responsibility for Residential Premises. Any item that requires regular replacement is the Tenant's responsibility during the tenancy. The Landlord was not responsible for doing replacing the lightbulbs, and the Tenant demanded that a professional replace the light bulbs. I therefore find that the Landlord is entitled to recover the cost incurred, namely \$222.08.

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 Landlord is entitled to 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, in the amount of \$4,768.77.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?**

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 June 5th, and the Landlord made their application on July 19<sup>th</sup>, I find that the Landlord did not make their application within 15 days of the forwarding address being provided.

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the security deposit, plus interest, as they have not complied with section 38(1) of the Act.

I note that Policy Guideline 17 indicates that only interest on the original deposit is payable; it is not to be doubled. However, Policy Guidelines are not binding upon me, and in this instance, I find the Guideline to be in error. Section 38.1(2) indicates that interest is calculated on the "amount" given in subsection (1). The amount in subsection 38.1 is "an amount that is double the portion of the security deposit". The text of the Act is clear, and interest must be calculated on the doubled deposit.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of double their security deposit under sections 38 and 67 of the Act, in the amount of \$4,300.00, plus interest. The interest on the doubled deposit I calculate in accordance with the Regulations to be \$180.26.

Under section 72 of the Act, I retain discretion to order that the return of the Tenant's security deposit be offset by any amount which the Landlord is entitled to. I allow the Landlord to retain the Tenant's security deposit in the amount of \$4,480.26 in partial satisfaction of the monetary award due to the Landlord.

**Is either party entitled to recover the filing fee for this application from the other?**

As both parties were significantly successful in their respective applications, I find each party should bear their own costs; both applications for the recovery of the filing fee are therefore dismissed, without leave to reapply.

## **Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$345.14** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	\$56.63
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	\$4,768.77
(less) a Monetary Order for the return of the Tenant's security deposit	\$4,480.26
<b>Total Amount</b>	<b>\$345.14</b>

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

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.

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: October 24, 2024

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Residential Tenancy Branch