

DECISION

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) 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 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 dealt with the Tenants' 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 Tenants were served on July 29, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

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

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.

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Issues to be Decided

Are the Landlords entitled to a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement?

Are the Landlords entitled to retain all or a portion of the Tenants' security and/or pet damage deposits in partial satisfaction of the monetary award requested?

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

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 1, 2023, with a monthly rent of \$2,250.00, due on first day of the month, with a security deposit in the amount of \$1,125.00, paid October 15, 2023. The Tenants vacated the rental unit June 30, 2024. The tenancy was originally for a fixed term tenancy until October 31, 2024.

The Landlords are seeking compensation for loss of rent and requested to retain the security deposit. The Tenants applied to have the security deposit returned and doubled.

Condition Inspection Report (CIR)

The parties confirmed no move-in or move-out CIR were completed, and no opportunities were given to the Tenants to participate in any move-in or move-out CIR. The Tenants' position is that the forwarding address was provided August 8, 2024, by regular mail (the Original Forwarding Address Package). The Landlords' position is that Original Forwarding Address Package did not have a PO box number listed, and the Landlords did not receive this package. Landlord JTA argued they received the forwarding address September 17, 2024, when they received a photograph of the Original Forwarding Address Package in their mailbox. The Tenants' position is that the PO box number was not listed on the Original Forwarding Address Package because it was sent at the post office where the PO box is located, and the worker advised no PO box number was necessary. The Tenants argued they never sent a photograph of the Original Forwarding Address Package to the Landlords so they don't know how the Landlords could have received this.

Loss of Rent

The Landlords are seeking \$9,000.00 for loss rent for 4 months. Landlord JTA advised that the Landlords were listing the rental unit for sale and provided updates to the Tenants about the progress of the sale. The Landlords received an offer on May 14,

2024, and advised the Tenants of this offer and that the possession date was November 4, 2024. The Tenants advised the Landlords via text message that they found a place and would be vacating for June 30, 2024. Landlord JTA argued they requested the Tenants provide written notice that they would be vacating and because the Tenants advised they had no printer the Landlords provided a Mutual Agreement to End Tenancy signed by the Landlords and with a move-out date of June 30, 2024. Landlord JTA argued the Tenants never provided a written notice to end tenancy but on May 31, 2024, after Landlord JTA sent a text message to the Tenants regarding not receiving a notice to end tenancy or rent for June 2024, the Tenants provided the mutual agreement to end tenancy but with the move-out time changed from 6:00 pm to 11:59 pm. Additionally, Landlord JTA argued that it was communicated to the Tenants that the sale was not finalized until subjects were removed on May 31, 2024 and the sale fell through on that date. The Landlords' position is that the mutual agreement to end tenancy was tied to the offer for sale and since the sale fell through and the Tenants changed the move-out time the mutual agreement to end tenancy was voided. Text messages between the Landlords and the Tenants were provided as evidence. In one text message the Landlords stated to the Tenants " we will be drawing up a notice for you guys after all subjects are removed, which I believe is middle of June".

Landlord JTA advised they did not try to re-rent the rental unit after the Tenants vacated because the rental unit was re-listed for sale and the Landlords did not want anything to impact a potential sale. Landlord JTA advised a friend did occupy the rental unit for a few months.

The Tenants' position is that the parties signed the mutual agreement to end tenancy, which was notice that the tenancy was ending, and that the sale of the rental unit is not related to the mutual agreement to end tenancy. Tenant TT argued that the Landlords never informed the Tenants the mutual agreement was no longer valid. The Tenants also argued the Landlords did not minimize their loss and they choose to not re-rent.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Are the landlords 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, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the testimony of both parties and the tenancy agreement, I find that the tenancy was for a fixed term until October 31, 2024, and the tenancy ended on June 30, 2024. I also find based on the testimony of both parties and the evidence that a mutual agreement to end tenancy was signed by the parties to end the tenancy for June 30, 2024.

When a tenant vacates or abandons the rental unit before the tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from the failure to comply with the Act or tenancy agreement, per Policy Guideline #3.

I find the tenancy ended through a mutual agreement to end tenancy, in accordance with section 44(1)(c) of the Act. The Landlord argued that the mutual agreement to end tenancy was voided because the sale of the home fell through, and the Tenants changed the move-out time. Based on the evidence of both parties, I find that there was no clear communication to the Tenants that the mutual agreement to end tenancy, which was signed and provided by the Landlords to the Tenants around May 20, 2024, was conditional on the sale of the rental unit. One text message did state that a notice will be given to the tenants once the subjects are removed; however, I find that this does not relate to the mutual agreement to end tenancy as the mutual agreement to end tenancy was given around May 20, 2024, before the subjects were removed. If the mutual agreement to end tenancy was dependent on the conditions being removed and the sale of the home going through, then the Landlords would not have provided the signed mutual agreement to end tenancy before those requirements were met. Based on the above, I find that the sale falling through did not void the mutual agreement to end tenancy. Additionally, I find that the changing of the move-out time does not invalidate the entire mutual agreement to end tenancy but rather that specific change is voided.

Based on the above, I find that the parties mutually agreed to end the fixed term tenancy early, and as such the Landlords are not entitled to a loss of rent.

Additionally, to claim loss of rent a landlord is required to establish they took reasonable steps to mitigate any loss by re-renting at a reasonable rent and as soon as possible, per Policy Guideline #5. Based on the testimony of Landlord JTA, the Landlords did not take any steps to mitigate any loss and choose to not re-rent because the property was re-listed for sale. As such, the Landlords also failed to mitigate any loss.

For the above reasons, the Landlords' application for a Monetary Order for loss of rent under section 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 or are the Tenants entitled to the return of the security 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.

The parties have differing perspectives on when the forwarding address was provided. The Tenants' position is that it was delivered by regular mail on August 8, 2024, and the Landlords' position is that they received a photograph of the forwarding address on September 17, 2024. As the Original Forwarding Address Package was sent using regular mail, there is no way to confirm if it was delivered or the date it was delivered. Additionally, Tenant TT confirmed the PO box number was missing from the Original Forwarding Address Package, and I have no ability to confirm the Tenants' argument that the PO box number was not required for delivery. Based on the testimony of both parties and the evidence, I find that the forwarding address was provided to the Landlords September 17, 2024. As the forwarding address was provided September 17, 2024, and the Landlords made their application on July 15, 2024, I find that the Landlords did make their application within 15 days of the forwarding address being provided and the tenancy ending.

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 inspected 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 or move-out report and extinguished their right to claim against the security deposit for damages, pursuant to section 24 and 36 of the Act. However, in this case, extinguishment has no effect, as extinguishment under sections 24 and 36 of the Act only relates to claims for damage to the rental unit. In this case, the Landlords claim does not relate to damage to the rental unit but compensation for loss of rent. As a result, the Tenants are not entitled to double the security deposit.

As no compensation was awarded to the Landlords, I grant the Tenants the return of their security deposit, plus interest.

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

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

As the Landlords were not successful in this application, the Landlords' application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$1,252.51** under the following terms:

| Monetary Issue | Granted Amount |
|---|-------------------|
| a Monetary Order for the return of all or a portion of their security deposit, plus interest, under sections 38 and 67 of the Act | \$1,152.51 |
| authorization to recover the filing fee for this application from the Landlords under section 72 of the Act | \$100.00 |
| Total Amount | \$1,252.51 |

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

I dismiss the Landlords' application in its entirety, 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 1, 2024

Residential Tenancy Branch