

## **DECISION**

### **Introduction**

This hearing dealt with repeat applications from the Landlord, including:

The Landlord's August 2, 2024, 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

The Landlord's August 11, 2024, 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
- 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

The October 17, 2024, teleconference was attended by the Landlord and their Wife, who was supported by L.S. who provided certified interpretation services.

The Landlords had the opportunity to provide sworn testimony and refer to evidence.

The Tenant did not attend and was not represented.

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

I find that the Landlord was served with Notice of the Tenant's forwarding address on or around August 6, 2024.

The Landlord testified that they used this address to serve the Tenant with Notice and Evidence related to the Landlord's two claims.

I find that Tenant was served on August 13, 2024, by priority mail of the Landlord's application dated August 2, 2024, in accordance with section 89(1) of the Act because this is the day that tracking provided by the Landlord, indicates that the package was collected.

I find that Tenant was served on August 19, 2024, by registered mail of the Landlord's application dated August 11, 2024, in accordance with section 89(1) of the Act because this is the day that tracking provided by the Landlord, indicates that the package was collected.

## **Service of Evidence**

The Landlord testified that they included copies of their documentary evidence uploaded to each application, within the two packages that were mailed to the Tenant at the address the Tenant provided for service.

I find that the Tenant was served with copies of the Landlord's documentary evidence on August 13 and August 19, 2024, as required by the RTB Rules of Procedure, and that I can consider this evidence in my decision making.

## **Preliminary Matters**

I asked the Landlord to confirm the specific of their financial claim against the Tenant.

In doing so, the Landlord testified that they have since amended their application dated August 2, 2024, to include the full extent of their financial claim.

At the time that the Tenant was served with Notice of the Landlord's two dispute applications, I find that the specifics of the Landlord's claim for compensation were spread across the Landlord's two applications, which as noted above, I found were properly served on the Tenant and so I am satisfied that the Tenant was properly notified of the full claim against them.

## **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 monetary loss under the Act?

- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?
- Is the Landlord entitled to recover the filing fee for this application from the Tenant?

## **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.

The Landlord testified that the residential property is a newly constructed Laneway house that was rented to two separate Tenants under their own tenancy agreements.

The named Tenant in this dispute signed a written tenancy agreement dated January 5, 2024, that involved the payment of a \$700.00 security deposit, and the payment of \$1,450.00 for rent on the fifth day of each month.

The Tenant rented a bedroom within the two-bedroom Laneway house.

The Landlord testified that they had the Tenant removed by a Bailiff from the rental unit on August 6, 2024, after the Landlord received an Order of Possession from the RTB on July 29, 2024.

The Landlord testified that they were paid rent as required by the Tenant between January 5, 2024, and August 4, 2026, because seven (7) months of rent was paid for a total of \$10,150.00 (7 x \$1,450.00).

The Landlord referred to a BC Hydro invoice dated July 12, 2024, showing costs of \$127.63 for unpaid utilities, and testified that a second bill of \$93.39 was charged, but evidence was not provided.

The Landlord testified that the Tenant paid utilities separately to the Landlord, and that they split the costs with the other tenant of the laneway house. The Landlord stated that the Tenant owes them about \$100.00 for utilities, which is higher than the \$50.00 amount that the Landlord had included on their application.

The Landlord claimed \$1,329.40 as compensation for damages against the Tenant, including:

- \$300.00 charge for cleaning
- \$580.00 charge for painting
- \$449.40 for "air cleaning"

The Landlord's Wife referred to photos submitted of the condition of the Tenant's rental unit at the end of the tenancy to argue that the Tenant never cleaned during their tenancy. They also referred to photos of the ceiling of the rental unit, showing that the

Tenant appeared to have used electrical tape to cover the pot lights which caused ceiling damage that needed to be repaired. They also referred to a photo showing multiple holes in the wall from an item the Tenant appears to have hung and removed from the wall.

The Landlord's Wife testified that they have not yet paid for "air cleaning" but argued that it is still needed because the Tenant regularly smoked marijuana within the rental unit without permissions.

The Landlord also claimed \$6,420.11 for monetary loss, or other money owed under the Act, including:

- Costs for Bailiff \$1,550.11
- Costs for Court fees for Writ of Possession \$120.00
- Loss of Rent for August \$1,450.00
- Penalty for two breaches of tenancy agreement \$1,450.00 x 2
- \$400.00 Compensation for rent that had to be returned to other Tenant in Laneway house

The Landlord provided copies of the Bailiff invoice and the receipt for court fees.

The Landlord claimed \$1,450.00 for loss of rental revenue for August 2024 since the Tenant moved in the middle of the month. The Landlord's Wife testified that they had a tenant from one of their other rental unit move into the Tenant's room in the Laneway house and that they have yet to re-rent this other unit.

The Landlord's Wife testified that there is no evidence of their efforts to re-rent this unit because the Landlords had been vacationing and were otherwise occupied.

The Landlord referred to the text of their tenancy addendum that is associated with this tenancy agreement and argued that they are entitled to \$2,900.00 in fines from the Tenant because they "broke" their agreement on multiple occasions.

The Landlord referred to proof of Etransfers from them, sending \$200.00 on two occasions to the other Tenant in the Laneway house and testified that this was because of the contents of the letter submitted as evidence from this other tenant. The Landlord testified that they had to compensate this other tenant for having to share a residential property with the Tenant in this dispute.

The Landlord and their Wife stated that a move-in condition inspection was not conducted, or a report produced because the Laneway house was brand new. The Landlord's Wife also testified that she felt bad for the Tenant who said they needed a place to live, and this is why the tenancy started on the fifth of January 2024.

## **Analysis**

### **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.

The Landlord agreed that this was a claim for utilities and not a claim for rent.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid utilities in the amount specified on the application of \$50.00 because I find that they provided evidence of verifiable utility costs of at least twice that value for the residential property.

I do not award the requested \$100.00 because I find that the Tenant was not given specific Notice of the increased claim.

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 unpaid utilities under section 67 of the Act, in the amount of \$50.00.

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

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 partial claim for compensation under the Act because:

- I find that the rental unit was brand new when the tenancy started.
- As seen in the comparison of photos provided from before and after this tenancy ended, the Tenant failed to leave the unit “reasonably clean” as required by section 37 of the Act and so the Landlords reasonably incurred verified costs of \$300.00 for cleaning the unit.
- As seen in the photos provided by the Landlord of electrical tape on the ceiling of the rental unit, I find that the Landlord is entitled to compensation for required painting of the brand new rental unit because the evidence of damage provided

by the Landlords is of damage, and not wear and tear which means that the Tenant is responsible for the costs of this damage under section 32 of the Act.

I therefore award the requested \$880.00 (\$300 +\$580).

I decline to award compensation for the air cleaning however because I find that the Landlord has not incurred the cost related to this service, since they testified that they did not have the service performed.

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.

I find the Landlord is entitled to a Monetary Order for compensation for damages and cleaning in the amount of \$880.00.

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

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 partial claim for compensation under the Act because:

- I find that the Landlord was required to hire a Bailiff to have the Tenant removed from the rental unit after receiving an Order of Possession from the RTB – I therefore award the requested \$1,670.11 (\$1,550.11 + \$120.00).
- I find in accordance with RTB Policy Guideline 3, that the Landlord is entitled to the difference in rent that was not paid for the month of August since this tenancy ended on August 6, and monthly rent was due on the fifth of each month and so I provided a prorated award of \$1,287.09 based on the calculations below:

$$\$1,450.00 \times 12 = \$17,400.00 / 365 = \$47.67 \text{ per day}$$

There are 27 days between August 5 and August 31

$$27 \times \$47.67 = \$1,287.09$$

- I award the requested \$400.00 as compensation that the Landlord paid in the form of a return on rent to the other tenant in the shared Laneway house

because I find based on my review of the letter from this other tenant, that they lost their quiet enjoyment of their rental unit due to the action of the named Tenant in this dispute.

I decline to award compensation for the requested “penalties” under the tenancy addendum because this is a custom clause that I find inconsistent with the Act and a potential effort to contract out of the Act, which is prohibited by section 5 of the Act.

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.

I find the Landlord is entitled to a Monetary Order for compensation for losses associated with this tenancy in the amount of \$3,357.20.

$\$1,670.11 + \$1,287.09 + \$400.00 = \$3,357.20$

### **Is the Landlord entitled to retain the Tenant’s security Deposit?**

The Tenant served their forwarding address on the Landlords on August 6, 2024.

I find that the Landlords satisfied their obligations under 38(1) of the Act because they applied to retain the Tenant’s deposit as part of their RTB application that was submitted on August 2, 2024.

Regarding the relevance of the Landlord’s failure to conduct a move-in condition inspection, and or move-out inspection as required by the Act, I find that this is irrelevant to this dispute because the Landlords also have a claim for general loss under the Act.

I therefore find in accordance with RTB policy guideline 17 and section 72 of the Act that the Landlords are entitled to retain the full value of the Tenant’s \$700.00 deposit against the general monetary losses they incurred due to this tenancy.

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

As the Landlord was successful in their application, I find that the Landlord is entitled to recover one of the \$100.00 filing fees paid for this application under section 72 of the Act. I decline to award both requested fees because I find that the Landlord could have reasonably submitted a single application to the RTB.

## **Conclusion**

I provide the Landlord with a monetary order in the amount of \$3,687.20 under the following terms:

Award for Utilities	\$50.00
Award for Damages	\$880.00
Award for Losses	\$3,357.20
Authorization to recover filing fee	\$100.00
	\$4,387.20
Authorization to retain security deposit	-\$700.00
Total amount owing to Landlord	\$3,687.20

The Landlords are provided with this Order and the Tenant must be served with a copy of this Order. Should the Tenant 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.

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 17, 2024

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Residential Tenancy Branch