



## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's 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

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid utilities 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 recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant H.R. attended the hearing for the Tenant.

The Landlord's Property Manager and Agent F.P. (the Landlord's Agent) attended the hearing for the Landlord

### **Preliminary Matters**

At the hearing, the Tenant requested to withdraw their application. The Landlord did not oppose the Tenant's request.

Based on the above, under section 64(3)(c) of the Act, and under Rule 7.12 of the Residential Tenancy Branch Rules of Procedure, I grant the Tenant's request to withdraw their application by amending their application to dismiss all of the matters raised in the Tenant's application, with leave to reapply.

### **Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence**

The Landlord testified that they served the Notice of Dispute Resolution Proceeding to the Tenant by email on September 6, 2024.

The Tenant testified that they did not receive the Landlord's email and that they only became aware of the Landlord's cross application when the Tenant contacted the Residential Tenancy Branch. The Tenant stated that they ultimately did receive a copy of the Landlord's Notice of Dispute Resolution on October 1, 2024, and that they have had a chance to fully review the Landlord's application and the Landlord's evidence.

Under section 71(2)(b) and (c) of the Act, I find that the Tenant has been sufficiently served with the Notice of Dispute Resolution Proceeding evidence on October 1, 2024.

### **Issues to be Decided**

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

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

Is the Landlord entitled to a Monetary Order for damage or loss?

Is the Landlord entitled to recover the filing fee?

### **Background and Evidence**

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

The written tenancy agreement showed that this tenancy began on September 30, 2022, and that the tenancy ended on July 31, 2024. The tenancy ended based on a ten day notice to end tenancy for unpaid rent, where the parties attended a previous hearing to determine the validity of the notice. The outcome of the hearing was in the Landlord's favour and the arbitrator ultimately granted the Landlord an order of possession based on the notice to end tenancy effective July 31, 2024. The file number of the previous hearing is referenced on the cover page of this Decision.

The rental unit is an apartment unit. The rent at the end of the tenancy was \$1,495.30 and due on the first day of the month. The Landlord was authorized by the arbitrator in the outcome of the previous hearing to retain the Tenant's entire security deposit.

The parties agreed that the Landlord completed a move in condition inspection report and provided a copy to the Tenant on September 1, 2022.

The Landlord's Agent testified that they completed the move out condition inspection report on August 9, 2024. The Landlord's Agent stated that they did not provide a copy to the Tenant because they did not know how to reach the Tenant, and that the Tenant

did not respond to the Landlord's communications. The Tenant agreed that they did not respond to the Landlord's email regarding a move out inspection.

### **Unpaid Utilities**

The Landlord's Agent requested compensation for unpaid utilities, specifically BC Hydro electricity fees, in the amount of \$287.43. The Landlord's Agent testified that the Tenant was responsible for utilities under the tenancy agreement and that the Tenant did not pay for three months' worth of utility fees. The Landlord submitted a copy of a ledger documenting the accumulation of the utility fees at the rental unit.

The Tenant testified that the Landlord has not supplied proof that they have paid the utility fees yet, and that the Landlord has not supplied proof that the meter company has discharged the utility fees from the Tenant's account yet.

### **Compensation for Damage to the Rental Unit and Compensation for Monetary Loss**

The Landlord's Agent testified that the rental unit was returned in a dirty, messy, and non-vacant condition. The Landlord's Agent submitted the condition inspection reports to show the condition of the rental unit at the end of the tenancy. The Landlord's Agent stated that while they do not have pictures of the rental unit before the tenancy began, they declared that the rental unit was brand new at the beginning of the tenancy.

The Landlord's Agent affirmed that they experienced monetary loss due while enforcing the Order of Possession from the previous hearing. The Landlord elaborated that they had to apply for a writ of possession, hire bailiffs, hire trash removal services, and hire a locksmith to replace the locks and the keys.

The Landlord's Agent submitted a copy of a monetary order worksheet, and invoices for cleaning fees, lock replacement, trash removal and repainting.

The Tenant did not dispute any of the items in the Landlord's monetary order worksheet.

### **Analysis**

#### **Is the Landlord entitled to a Monetary Order for unpaid utilities?**

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 loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

All four of the conditions in the above four-point test must be satisfied in order to be awarded compensation.

Based on the testimony of the parties, the evidence submitted, and on a balance of probabilities, I find that the Landlord has not established their claim for compensation in the amount of \$287.43 for the unpaid utilities.

I have examined the written tenancy agreement and although I find it more likely than not that the Tenant was responsible for paying the utilities under the tenancy agreement, and although I acknowledge the Tenant did not fulfill their obligation to pay those utility fees. However, I find that the Landlord has not demonstrated the value of the loss as it is still unclear to me whether the Landlord has paid the arrears for the utilities at the time of the hearing. I note that the Landlord has not submitted any receipts to show that the arrears has been paid.

Consequently, I find that the Landlord has not satisfied the third condition of the four point test.

The Landlord's request to be granted a Monetary Order to recover the unpaid utilities fees is dismissed, without leave to reapply.

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

The same four-point test applies.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In this case, the Landlord requested compensation for bailiff fees, cleaning fees, trash removal services, repairs and repainting of the rental unit, writ of possession fee, and the replacement lock fee.

Based on the testimony of the parties, the evidence submitted, and on a balance of probabilities, I find that the Landlord has established their claim for compensation for damage and monetary loss due to the Tenant's breach of the tenancy agreement.

Specifically, I find it more likely than not that the Tenant did not comply and vacate the rental unit after the Order of Possession from the previous hearing was served, and as a result the Landlord had to incur a monetary loss by applying for a writ of possession and hiring bailiffs to remove the Tenant from the rental unit.

I accept the Landlord's calculation for the cost of bailiff fees and the writ of possession in the amount of \$1,352.95 and \$120.00 respectively. I further find that the Landlord acted reasonably by seeking the legal means, such as hiring bailiffs, to remove a tenant who does not vacate a rental unit to comply with an Order of Possession.

Next, I find it more likely than not that the Landlord incurred a monetary loss due to the Tenant's breach of section 32 and section 37 of the Act, specifically by returning the rental unit in a damaged and unclean condition and failing to return the keys to the Landlord. I accept the Landlord's calculation for the monetary loss they incurred due to the above breaches, specifically \$125.00 for cleaning fees, \$540.75 for trash removal services and repainting fees, and \$181.29 for replacement lock and key fees. I find that the Landlord acted reasonably by making an application to the Residential Tenancy Branch shortly after the Tenant vacated the rental unit to recover the loss that they incurred.

The amounts awarded above added together equal \$2,319.99.

Based on the above, under section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$2,319.99.

### **Is the Landlord entitled to recover the filing fee?**

As the Landlord was mostly successful on the issues in their cross application, I find that the Landlord is entitled to recover the cost of the \$100.00 application's filing fee.

### **Conclusion**

The Tenant's application was withdrawn.

The Landlord's request to recover the unpaid utilities is dismissed, without leave to reapply.

The Landlord's request for compensation for damage and monetary loss in the amount of \$2,319.99 is granted.

The Landlord's request for the \$100.00 filing fee is granted.

The Landlord is granted a Monetary Order in the amount of \$2,419.99. The Landlord is provided with this Monetary Order and the Tenant 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) if

equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: November 14, 2024

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Residential Tenancy Branch