

DECISION

Introduction and Procedural History

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
- 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 Tenant's 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 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

At the previous hearing, an adjournment was required due to issues with service from the Tenant's party. The parties were provided with instructions and were ordered to comply prior to the continuation hearing. The instructions and orders are contained in the Interim Decision dated November 28, 2024. The Interim Decision and this Decision are to be read together.

Service of the Landlord's Notice of Dispute Resolution Proceeding

The Tenant confirmed that they received the Landlord's Notice of Dispute Resolution Proceeding.

Service of Evidence

The Tenant confirmed that they received the Landlord's evidence for the Landlord's application.

The Tenant testified that they did not serve any evidence for the Landlord's application.

Service of the Tenant's Notice of Dispute Resolution Proceeding and the Tenant's Evidence

At the continuation hearing, the Landlord confirmed that they received the Tenant's Notice of Dispute Resolution Proceeding and the Tenant's evidence.

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 of the rental property?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of the Tenant's security deposit and pet damage deposit?

Are the parties entitled to recover the filing fee?

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 July 1, 2019, with a monthly rent of \$1,140.00 due on the first day of each month. The parties agreed that the Tenant vacated the rental unit and provided their forwarding address on September 2, 2024. The parties also agreed that the Landlord continues to hold the Tenant's \$550.00 security deposit, and the Tenant's \$550.00 pet damage deposit. The rental unit is the lower suite of a detached house. The Tenant rents the entire lower suite. The Landlord retains possession of the upper suite.

The parties agreed that the Landlord did not provide the Tenant with a condition inspection report during or after the move in inspection, and the Landlord did not provide the Tenant with a condition inspection report during or after the move out inspection. The parties also agreed that a move out inspection was conducted on September 2, 2024, and that all parties were present.

Unpaid Rent

The Landlord's application requested for September of 2024's unpaid rent in the amount of \$1,140.00.

The Landlord's Counsel N.L. declared that the Tenant failed to give proper notice and vacated without paying September 2024's rent. N.L. testified that the Tenant provided their notice to end tenancy by placing their notice in the Landlord's mailbox on August

24, 2024. A copy of the Tenant's notice to end tenancy was submitted by the Landlord, the effective date of the notice is August 31, 2024. N.L. stated that had the Tenant wanted to provide notice to end tenancy with an effective date of August 31, 2024, the Tenant would have needed to deliver their notice on or before July 31, 2024.

The Tenant's Son and Agent S.S. testified that the Tenant S.H. delivered their notice to end tenancy to the Landlord's mailbox on August 1, 2024.

Damage to the Rental Unit

The Landlord's application requested compensation for damage to the rental unit's interior flooring and the exterior driveway.

The Landlord's Counsel N.L. submitted pictures of the interior flooring taken at the beginning of the tenancy and at the move out inspection, N.L. also submitted copy of the quote to repair the floor. N.L. referred to the Landlord's 6-paged written submission evidence, specifically paragraph #17, which reads:

During her tenancy, the Tenant caused damage to the Apartment. In particular, the Tenant damaged the floor of the Apartment which is estimated to require repair costs of \$865.56. When the Landlord's Agents asked the Tenant during the Move-Out Inspection how the floor was damaged, the Tenant informed them that it was done by her plumbers. To date, the Landlord or the Landlord's Agent cannot recall being informed by the Tenant about plumbing issues and permitting the Tenant to carry out any repairs for same. The Tenant also did not tell the Landlord about the damage to the floor before the end of tenancy

The Tenant's Son and Agent S.S. testified that they do not believe the Landlord's picture evidence from the beginning of the tenancy are relevant given that the Landlord did not complete a move in inspection.

The Landlord's Counsel N.L. testified that the Tenant's Son and Agent S.S. frequently parked their car on the driveway and that S.S.'s car leaked its fluids onto the driveway causing damage. N.L. submitted a copy a picture of the stains on the driveway, a copy of a quote the Landlord received to reseal the driveway, and a copy of a text message dated October 1, 2022, where the Landlord provided the Tenant with pictures of the stains on the driveway and requested for the Tenant to place a piece of plywood underneath their car. N.L. referred to the text message and emphasized that the Tenant responded and acknowledged the Landlord's text message.

The Tenant's Son and Agent S.S. declared that their car is well maintained and that they do not believe that a car can create such a severe oil stain on the driveway. S.S. testified that they do not always park their car on the driveway, for example when the Landlord's cars are on the driveway, S.S. would park their car on the street. S.S. stated that they didn't live at the rental unit but would typically visit up to four weeks in a year.

The Tenant's Son and Agent S.S. requested the return of the Tenant's security deposit and pet damage deposit.

Analysis

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

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section G of Residential Tenancy Policy Guideline #13 expands on Section 45 of the Act in plain language. A passage from section G of Policy Guideline #13 reads:

In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due.

I accept both parties testimony that the Tenant vacated the rental unit on September 2, 2024. I also accept that there was a written notice to end tenancy provided by the Tenant to the Landlord.

The remaining question is whether the Tenant provided a valid notice to end tenancy within the required window to effectively remove their obligation to pay for September of 2024's rent under the tenancy agreement.

In this case, based on the testimony provided by the parties, I find it more likely than not that the Landlord has established their claim that the Landlord is entitled to a Monetary Order for September of 2024's unpaid rent.

I make the above finding based on two significant statements made during testimony. First, the Landlord's testimony that they did not receive the Tenant's notice to end tenancy on or before July 31, 2024. Second, in the Tenant's own testimony, the Tenant's Son and Agent S.S. distinctly stated several times that the Tenant provided

their notice to end tenancy on August 1, 2024. Combined with a copy of the Tenant's notice to end tenancy, I find it more likely than not that the Tenant did not comply with section 45(1) of the Act.

Consequently, I find that the Tenant vacated on September 2, 2024, without being relieved of their obligation to pay rent in full on the due date under the tenancy agreement. Under section 26 of the Act, and the tenancy agreement, the Tenant would be responsible for rent for September 2024, and I find it more likely than not that the Tenant did not pay as required.

Under section 72 of the Act, I grant the Landlord a Monetary Order for unpaid rent, in the amount of \$1,140.00.

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

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

Section 32(3) of the Act states that a tenant of a rental unit 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.

In this case, based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord has established a partial claim that the Tenant caused damage to the rental unit during the tenancy, specifically the interior flooring.

I assign significant weight to paragraph 17 in the Landlord's written submissions, and the fact that the Tenant did not dispute the Landlord's allegation that the Tenant hired plumbers during the tenancy. Based on this, I find it more likely than not that the damage occurred during the tenancy while the Tenant had exclusion possession of the rental unit, and that the Tenant breached section 32(3) of the Act by failing to repair the damage. I find that this satisfies the first and second condition of the four-point test.

I accept the Landlord's claimed value of the damage, demonstrated by the \$865.56 quote they submitted. I find that this satisfies the third condition of the four-point test.

I find that the Landlord acted reasonably by making an application to claim the amount of the damages against the Tenant. I find that this satisfies the fourth condition of the four-point test.

Regarding the stains on the driveway, considering the testimony of the parties, the evidence submitted, I find that the Landlord has not submitted sufficient evidence to clearly demonstrate that the Tenant or somebody permitted on the property by the Tenant is responsible for damaging the driveway with oil stains.

For example, I find it more likely than not that the driveway is shared between the residents of the property, such as the Landlord's son, and the Tenant's Son. In the absence of any records to demonstrate the extent of the Tenant's Son S.S.'s usage, I find that the Landlord has not met the evidentiary threshold required for me to be satisfied that the stains on the driveway are due to the Tenant's breach of the Act or the tenancy agreement.

Therefore, I find that the Landlord did not satisfy the first condition of the four-point test and the test fails. I decline to award the Landlord their request for compensation on this portion of their request for compensation.

Outcome

Under section 67 of the Act, I find that the Landlord is entitled to a Monetary Order in the amount of \$865.56, for damage to the interior flooring of the rental unit due to the Tenant's breach of the Act.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of the Tenant's security deposit and 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 tenancy ended the same day the forwarding address was provided, September 2, 2024, and the Landlord made their application on September 17, 2024, I find that the Landlord did make their application within the required time.

Section 23 of the Act states provides that it is the landlord's responsibility to offer at least two opportunities to do the move in inspection, to complete the report, to provide the report within seven days after the inspection, and to complete the inspection and the condition inspection report even if the tenant does not attend after having been given two opportunities.

Section 24(2) of the Act states that the right of a landlord to claim against a security deposit or a pet damage deposit is extinguished if the landlord does not provide the tenant with at least two opportunities to do a move in inspection, do the move in inspection, and to provide the move in condition inspection report to the tenant within seven days after the inspection is complete under Section 18 of the Residential Tenancy Regulation.

In this case, given the Landlord's stated that they did not provide a move in condition inspection report, I find that the Landlord's right to claim against the security deposit and the pet damage deposit is extinguished under section 24(2) of the Act. I find that the Landlord's extinguishment applies regardless of whether a condition inspection report was completed at the end of the tenancy.

Section 38(4) states that a landlord may retain an amount from a security deposit or a pet damage deposit if (a) at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Section 38(5) states that the right of a landlord to retain all or part of a security deposit or pet damage deposit under section 38(4)(a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24(2) of the Act.

I find that there is no evidence to show that the Landlord has been provided an order from the director to retain the Tenant's security deposit and pet damage deposit.

Based on the above, as the Landlord had extinguished their right to claim against the security deposit, I find that the Landlord is not authorized to retain all or a portion of the Tenant's security deposit, and the Tenant's pet damage deposit.

In these circumstances, I further find that section 38(6) of the Act is applicable here, specifically that the Landlord may not make a claim against the security deposit, and must pay the Tenant double the amount of both the security deposit and pet damage deposit plus interest on only the original portion of both deposits.

The original security deposit is \$550.00, and the original pet damage deposit is \$550.00. The doubled portion of the security deposit is \$550.00, the doubled portion of the pet damage deposit is \$550.00. The interest accumulated on the original security deposit is \$25.40. The interest accumulated on the original pet damage deposit is \$25.40. The amounts combined equal \$2,250.80.

The interest is calculated in accordance with the Residential Tenancy Regulation and with the assistance of the publicly available Deposit Interest Calculator.

Under section 67 of the Act, I grant the Tenant a Monetary Order in the amount of \$2,250.80 for the return of the security deposit, the pet damage deposit, plus the double portion on both deposits, plus the interest accumulated on both of the original deposits.

Are the parties entitled to recover the filing fee?

As the Landlord was largely 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 granted.

As the Tenant was successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

The amounts awarded on this issue are set off against each other and no monetary order is required.

Conclusion

The Landlord is granted a Monetary Order for unpaid rent, in the amount of \$1,140.00, and a Monetary Order in the amount of \$865.56, for damage to the interior flooring of the rental unit due to the Tenant's breach of the Act. The total amount of the Landlord's established claim is \$2,005.56.

The Tenant is granted a Monetary Order in the amount of \$2,250.80 for the return of the security deposit, the pet damage deposit, plus the double portion on both deposits, plus the interest accumulated on both original deposits.

Given that both parties were successful in their applications and granted monetary orders, under section 72 of the Act, I set off the amounts granted in the orders against each other, and ultimately the Tenant is granted a Monetary Order for the remaining balance of \$245.24.

The Tenant is provided with this Order 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 18, 2024

Residential Tenancy Branch