

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
- 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

and the Tenant's Application for Dispute Resolution under 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

S.M. attended the hearing for the Landlord.

J.T. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord sent the Proceeding Package to the Tenant by email. The Tenant confirmed receipt of the Proceeding Package by email on October 18, 2024. Email is not an approved method of service in this tenancy. Because the Tenant acknowledged receipt, I find that the Proceeding Package which was not served in accordance with section 89 of the Act is sufficiently served for the purposes of the Act.

The Tenant did not serve the Proceeding Package for their cross-application to the Landlord.

Service of Evidence

The Landlord sent the evidence to the Tenant by email. The Tenant confirmed receipt of the evidence by email on October 18, 2024. I find that the Proceeding Package which

was not served in accordance with section 88 of the Act is sufficiently served for the purposes of the Act.

The Tenant did not serve evidence to the Landlord. As a matter of procedural fairness, I did not consider evidence submitted by the Tenant.

Preliminary Matters

Because the Tenant failed to serve the Proceeding Package and evidence for their application to the Landlord as required by the Act and Residential Tenancy Branch Rules of Procedure (Rules of Procedure), and did not have a reasonable explanation for failing to do so, I dismissed their application with leave to reapply pursuant to Rule 3.4 of the Rules of Procedure. The Tenant need not reapply for their remedy though, because the Landlord's cross application resolves the issue.

Issues to be Decided

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

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

The tenancy began on May 1, 2023, and ended on September 30, 2024. The current monthly rent at the time the tenancy ended was \$1,650.00 due on the first day of the month. The Landlord holds a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$750.00, both of which were received on April 1, 2023. The most recent iteration of their tenancy agreement is dated July 26, 2023, with a fixed term of October 1, 2023, to March 31, 2024.

The parties agree that there was conflict between Tenant J.T. and Landlord S.M. in August 2024, following which Landlord S.M. communicated to Tenant P.L. that the tenancy should end.

While inconsistent with the tenancy agreement submitted in evidence, the Landlord said that their agreement was expiring and due for renewal September 30, 2024. He said that he "told them they needed to move along" but understood it may take them several months to find alternate housing. The Landlord said he expected the Tenants to give 30 days written notice to end tenancy when they formally intended to move.

The Landlord said that he provided a reference for the Tenants to their new landlord but did not know specifically when they would take possession of the new unit.

The Landlord said that in mid-September 2024, the Tenants communicated that they would be vacating the rental unit on September 30, 2024, and asked to meet for a walk-through of the unit. The Landlord submitted a copy of an email received from the Tenants on September 18, 2024, which reads in part:

We have received your mutual agreement to end tenancy. Based on the conversation with [P.L.] on August 26th, you asked us to leave the premise as soon as possible. Due to tension and constraints, we are complying with your original request. You did not formalize a mutual agreement to end tenancy at that time, or a formal notice to vacate. We have complied with your August 26th request to leave as soon as possible. As per our notification to you through [P.L.] on August 26th we will be vacating the premise on September 30th and are requesting a time to book a move out walkthrough.

This email was submitted as Proof of Service of the Proceeding Package by the Landlord, because he replied directly to it with notice of this application on October 18, 2024.

The parties met on September 30, 2024, but the Landlord was unwilling to accept the keys from the Tenants because in his view he had not received proper written notice to end tenancy. He demanded rent for the month of October 2024, but the Tenants were unwilling. He told the Tenants to leave the keys in the care of the upstairs tenants.

The Landlord said that he did not take steps to immediately re-rent the unit because in his view the tenancy did not end in accordance with the Act, and because in his experience, no one would be willing to rent a unit on short notice or mid-month. He further said that he did not have immediate access to the unit because he had not accepted the keys from the Tenants on September 30, 2024.

He said that he spoke with his circle of family and friends in mid-to-late-October 2024 and re-rented the unit to an employee effective November 1, 2024.

The Tenant said that in their view they were verbally evicted by the Landlord in late August 2024. They understood that they were to vacate the unit at his request by September 30, 2024. The Tenant agreed that he did not provide written notice to end tenancy but reiterated that there had been communication with the Landlord throughout September 2024 about their plans to leave as requested. The Tenant said that had they not been asked to leave, they would have continued their tenancy in the unit.

The Tenant said that during the walk-through on September 30, 2024, the Landlord confirmed there was no damage to the rental unit. The Landlord confirmed this again at the hearing. The Tenant was not provided with a condition inspection report.

The Tenant provided their forwarding address to the Landlord in writing on October 3, 2024.

Analysis

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

It is undisputed that the Tenant vacated the property on September 30, 2024. Section 44 of the Act states that a tenancy ends only under several specific circumstances, one being when the tenant vacates the rental unit.

As the tenancy ended on September 30, 2024, and rent at that time had been paid to date, the Landlord is not entitled to a Monetary Order for unpaid rent.

It is apparent that the Landlord seeks compensation instead under section 7 of the Act. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, the arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

As the Landlord was explicit in his application as to what he was seeking and the Tenant understood his intention, I find it appropriate to amend the application and consider whether he is entitled to compensation under section 67.

The Landlord submits that the Tenant breached the Act by not providing written notice to end tenancy which resulted in a loss of rental income for the month of October 2024.

While the Landlord is correct that the Act requires the Tenant provide one month written notice to end tenancy under sections 45 and 52, the Act also requires that a fixed term tenancy without a requirement to vacate clause continue month-to-month on the same terms after expiry under section 44. The Landlord admits that he told the Tenant that their agreement was due for renewal on September 30, 2024, and that they needed to “move along”.

Further, section 7 of the Act states that a landlord who claims compensation for loss must do whatever is reasonable to minimize the loss. The Landlord in this circumstance induced his own loss, requiring the tenants to vacate and refusing to receive the keys to the rental unit or advertise the unit for rent.

It was known to the Landlord at four stages that the Tenant would be vacating the rental unit: first, when he required them to vacate on August 26, 2024; second, when he provided a reference to their new landlord; third, when he received the clearly worded email on September 18, 2024; and fourth, when he conducted a move-out inspection and openly refused to accept the keys to the rental unit on September 30, 2024.

I find that the Landlord failed to take any reasonable steps to minimize their loss. The Landlord made no effort to clarify with the Tenant on which date they intended to vacate

the rental unit, when he required them to do so or when he received their request for a rental reference. The Landlord then intentionally obstructed his ability to re-rent the unit by refusing to accept the keys or advertise the unit.

For the above reasons, the Landlord's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

As I have not granted the monetary award requested by the Landlord, the Landlord is not entitled to retain all or a portion of the Tenant's security deposit.

Residential Tenancy Policy Guideline 17 says that the arbitrator will order the return of a security deposit less any deductions permitted under the RTA on a landlord's application to retain all or part of the security deposit.

I find that the Tenant is entitled to a Monetary Order for the return of their deposits under sections 38 and 67 of the Act.

Section 1 of the Act defines security deposit as money paid to a landlord that is to be held as security for any liability or obligation but does not include a pet damage deposit. Pet damage deposit is defined as money paid to a landlord that is to be held as security for damage to residential property caused by a pet.

While the Landlord applied for dispute resolution on October 15, 2024, claiming against the security deposit because of a perceived outstanding liability or obligation, the Landlord improperly withheld the pet damage deposit as their claim was not specific to damage caused by a pet. Further, the Landlord's right to claim against either deposit for damage to the residential property was extinguished because he did not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations pursuant to sections 24 and 36 of the Act.

The Landlord was provided with the forwarding address of the Tenant on October 3, 2024, and was required to repay the pet damage deposit with interest within 15 days after receiving the Tenant's forwarding address pursuant to section 38(1) of the Act, by October 18, 2024.

Section 38(6) of the Act states that if a landlord does not comply with the requirement to repay the deposit, the landlord must pay the tenant double the amount of the deposit.

Therefore, I find that the pet damage deposit specifically must be doubled, and the security deposit returned, with interest.

I grant an order in the Tenant's favor for return of the security deposit in the amount of \$750.00, plus interest in the amount of \$30.01 (calculated from April 1, 2023, to December 3, 2024).

I grant an order in the Tenant's favor for return of the doubled pet damage deposit in the amount of \$1,500.00, plus interest in the amount of \$30.01 (calculated from April 1, 2023, to December 3, 2024).

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

As the Landlord was not 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 dismissed, without leave to reapply.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2,310.02** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$780.01
a Monetary Order for the return of all or a portion of their pet damage deposit under sections 38 and 67 of the Act	\$1,530.01
Total Amount	\$2,310.02

The Tenant is provided with this Order in the above terms 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 and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Landlord's application is dismissed entirely, 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: December 3, 2024

Residential Tenancy Branch