



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with two applications pursuant to the Residential Tenancy Act (Act).
The Tenant's application for:

- A monetary order of \$31,400.00 for compensation for monetary loss or money owed
- Return of their security deposit that the Landlord is retaining without cause
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

And the Landlord's application for:

- A monetary order of \$2,950.00 for unpaid rent
- A monetary order of \$563.06 for compensation for damage or loss under the Act
- Authorization to retain all of the Tenant's security deposit in partial satisfaction of the Monetary Order requested

Those listed on the cover page of this decision attended the hearing and were affirmed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

The original hearing began on December 17, 2024, and an Interim Decision was issued dated December 19, 2024, which should be read in conjunction with this decision.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters

At the outset of the hearing, the Tenant testified that they would like to proceed on the increased monetary claim as per their revised claim outline submitted in evidence on December 1, 2024.

I find the Tenant did not properly submit the revised claim as an Amendment through the RTB DMS Dispute Access site and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 4.1. For these reasons, I refuse the increased claim, as it was not formally amended in accordance with Rule 4.1.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order of \$31,400.00 for compensation for monetary loss or money owed under the Act?

Is the Tenant entitled to recover the filing fee?

Is the Landlord entitled to a monetary order for unpaid rent, and for compensation for damage or 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 Order requested under section 38 of the Act, or is the Tenant entitled to the return of the security deposit that the Landlord is retaining without cause?

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 rental unit is the main house on a 5.5 acre property (the Property). Both parties agreed that this tenancy began on October 1, 2021, and the Tenant vacated the rental unit on August 29, 2024. The monthly rent of \$2,950.00 was due on the first day of each month. On August 30, 2021, the Tenant paid a security deposit in the amount of \$1,500.00, which the Landlord continues to hold in trust.

The parties did not complete a move-in Condition Inspection Report (CIR). The parties did not complete the move-out CIR.

The Tenant testified that on September 6, 2024, they provided their forwarding address in writing to the Landlord. The Landlord testified that on October 11, 2024, they received the Tenant's forwarding address in writing.

The Tenant is seeking a monetary order as follows:

Item 1 - \$1,800.00, \$300.00 per month x 6 months, for loss of quiet enjoyment and intrusion of privacy. The Tenant testified that the Landlord was residing at the Property and was to move at the start of the tenancy. The Tenant stated that the Landlord failed to do so as per their stated plans.

The Tenant testified that the Landlord occupied a storage facility 40 feet away from the rental unit, from where they could view the kitchen and dining room of the rental unit. The Tenant stated that the Landlord continued to occupy the storage facility and used their laundry for approximately six months, and they are unsure of the Landlord's exact move out date.

The Landlord testified that they occupied the coach house on the Property, and that they were 96 to 112 feet away from the rental unit. The Landlord testified that they were on the Property for six weeks and then they left for California. The Landlord testified that the Tenant offered for them to use the laundry facilities, however, they did not do so.

Item 2 - \$4,200.00, for loss of exclusive use of property and loss of privacy. The Tenant testified that the Landlord moved in an airstream trailer on the Property, 20 feet from the rental unit. The Tenant stated that the airstream trailer remained on the Property for the period of 14 months.

The Landlord testified that the airstream trailer was on the Property for rental purposes. Agent DM for the Landlord testified that the airstream trailer did not impact other residents of the Property.

Item 3 - \$500.00, for loss of quiet enjoyment. The Tenant testified that during the summer of August 2022 their parents visited them, and the Landlord agreed for them to park their travel trailer on the Property. The Tenant testified that the Landlord did not keep this verbal agreement.

The Landlord testified that they could not accommodate the sewer and water connection in this situation. The Landlord stated that they accommodated the Tenant's parent's overnight and then the Tenant's parents decided to leave.

Item 4 - \$1000.00, for aggravated damages. The Tenant testified that they were harassed and bullied by the Landlord, and had to seek alternate accommodation.

Item 5 - \$1000.00, to arrange to have someone to be home at all times due to the Landlord's threat of August 14, 2024, that they would hold the Tenant's belongings. The

Tenant stated they felt unsafe in their home. The Tenant referred to the email communication submitted as part of their documentary evidence.

The Landlord testified that they did not speak to the Tenant from March 2023 to August 2024. The Landlord stated that when the Tenant provided insufficient notice to end the tenancy, they stated they would hold items as some of those item belonged to them.

Item 6 - \$12,500.00, \$500.00 per month x 25 months, for loss of use. The Tenant stated that the Tenancy Agreement included furniture, such as couches, chairs, bookshelves, pots and pans. The Tenant testified that in July 2022 the Landlord removed some of these items from the rental unit.

Item 7 - \$10,500.00, \$300.00 per month x 35 months, for no access to pool and hot tub. The Tenant testified that the rental advertisement for the rental unit showed a pool. The Tenant stated that the pool was never functional and they received no rent reduction.

The Landlord testified that the pool was never part of the Tenancy Agreement, and was closed off. The Landlord admitted that the parties discussed the possibility for the Tenant to clean and use the pool and hot tub. The Landlord stated the pool and hot tub were last used in July 2022.

Item 8 - \$850.00, \$50.00 per month x 17 months, for unlawful rent increase. The Tenant testified that at the start of the tenancy the monthly rent was \$3000.00. In March 2023, the parties discussed a rent reduction of \$200.00, for monthly rent of \$2800.00, if the Tenant agreed to cover cable and Wi-Fi costs . The Tenant stated that the Landlord only agreed to monthly rent of \$2,850.00 after they got the services installed.

The Landlord testified that the Tenant approached them to secure their own cable and Wi-Fi and they had a conversation for rent reduction of \$200.00 per month. Thereafter, the parties agreed to \$150.00 according to the bills provided. The Landlord said the bill showed the amount of \$149.00, hence the parties agreed to the \$1.00 difference and accepted \$150.00. The Landlord stated that the Tenancy Agreement included the cable and Wi-Fi and, therefore, they reduced monthly rent in the amount of \$150.00 once the Tenant installed these services, and this amount was determined by the amount shown on the bill.

Item 9 – \$3,600.00, \$1,800.00 x 2, for double the return of the security deposit. The Tenant testified that they paid the security deposit of \$1,500.00 and their claim is for the total amount of \$3000.00, \$1,500.00 x 2, for double the return of their security deposit.

The Tenant testified that on September 6, 2024, they provided the RTB -#41 form to the Landlord, with their forwarding address for the return of their security deposit.

The Landlord stated that they blocked the Tenant's email, and that the Tenant messaged them from two separate email accounts. The Landlord stated that the Tenant also requested the incorrect amount of \$1,800.00.

The Landlord stated they received the Tenant's email on October 11, 2024.

The Landlord is seeking a monetary order as follows:

Item 1 - \$2,950.00, for unpaid rent for September 2024. The Landlord testified that the Tenant provided improper notice to end the tenancy. The Tenant's notice to end tenancy (Tenant Notice) was submitted in evidence. The Tenant Notice dated August 14, 2024, has the effective date of August 31, 2024.

The Landlord testified that they cleaned the rental unit in September 2024 and immediately advertised the rental unit for re-rental, and secured a new tenancy with the effective date of October 1, 2024.

The Tenant testified that the tenancy ended when they vacated on August 29, 2024. The Tenant stated that when they provided their Tenant Notice, the Landlord threatened to hold their belongings if they did not vacate the rental unit.

Item 2 - \$563.06, for cleaning costs. The Landlord's application details indicated the following for this claim:

- There was also an electrical bill of \$1000.00 to fix broken fixtures. However, I, can accept that as wear n tear over a three year occupation.

[reproduced as written]

The Landlord testified that there was damage related to broken fixtures, however, they are only claiming the cost of cleaning in the amount of \$536.06. The Landlord referred to photographs and an invoice dated September 12, 2024, as part of their documentary evidence.

The Tenant testified that they received from the Landlord their claim of \$563.06 for broken fixtures, however, they did not receive a claim for cleaning costs. The Tenant stated that they were not given the opportunity to prepare their response and evidence for this claim of cleaning costs.

The Tenant stated that they relied on professional cleaning services and a pressure washer company, and they would have submitted additional evidence if they were served with this claim as part of the Landlord's application.

Analysis

Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party did whatever was reasonable to minimize their loss.

Where the claiming party has not met each of the four steps, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Is the Tenant entitled to a monetary order of \$31,400.00 for compensation for monetary loss or money owed under the Act?

Section 28 of the Act states a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy, freedom of disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29.

Residential Tenancy Branch (RTB) Policy Guideline 6 (PG 6) states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In this case, I find that the Tenant did not prove ongoing interference or unreasonable disturbance by the Landlord. I find there is insufficient evidence before me to substantiate the claim for ongoing interference of unreasonable disturbances.

Further, I find the Tenant failed to do whatever was reasonable to minimize their loss as required by the Act. If the Tenant were impacted by the Landlord's actions, I would expect them to notify the Landlord in order for them to rectify the issue. I find that the Tenant never informed the Landlord of their concern with respect to Item 1, Item 2, Item 6 and Item 7.

For the above reasons, the claim for Item 1, Item 2, Item 6 and Item 7 are dismissed without leave to reapply.

For Item 3, I accept the parties discussed an arrangement for when the Tenant's parents visited. In this case, I find the Tenant did not establish that loss occurred due to the Landlord's actions or neglect in violation of the Act, tenancy agreement or regulations. As such this claim is dismissed without leave to reapply.

For Item 4 and Item 5, I find the Tenant did not prove the claimed damage or loss. The Tenant did not provide a breakdown of the amount of \$1000.00 for each claim, and they did not prove the amount of or value of the damage or loss. I find there is insufficient evidence to support the Tenant's claim for Item 4 and Item 5. As such, these claims are dismissed without leave to reapply.

For Item 8 of the Tenant's claim, I find they did not prove that the Landlord has failed to comply with the Act, regulations on tenancy agreement. In this case, the rent reduction was applied in the amount of \$150.00 once the Tenant arranged for their own cable and Wi-Fi. If the Tenant had concern with this amount, they were to inform the Landlord and take action on the matter to minimize the claimed loss as required by the Act. By failing to do so, I find the Tenant's claim increased to the amount of \$850.00. For these reasons, this claim is dismissed without leave to reapply.

For the above reasons, the Tenant's application for a Monetary Order for compensation for monetary loss or money owed under the Act is dismissed, without leave to reapply.

Is the Landlord entitled to a monetary order for unpaid rent, and for compensation for damage or loss under the Act?

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.

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 claim for unpaid rent owing in the amount of \$2,950.00 for September 2024.

In this case, the Tenancy Agreement requires the Tenant to pay monthly rent on the first day of each month. The Tenant did not provide a one month notice to end tenancy, as required by section 45(1) of the Act, which states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

As the Tenant did not provide notice as per section 45 (1) of the Act, I find they must pay rent due on September 1, 2024. The Tenant stated that they had to immediately vacate the rental unit due to the Landlord's threat to hold their belongings, however, I find the Tenant had made their decision to end the tenancy prior to, when they provided their Tenant Notice on August 14, 2024.

Further, I find the Landlord took steps to minimize their loss by advertising and re-renting the rental unit. The Landlord was successful in securing a tenancy with the start date of October 1, 2024.

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 rent under section 67 of the Act, in the amount of \$2,950.00.

I decline to award the Landlord the amount of \$563.06 for cleaning costs. I find the Landlord did not detail this claim as part of their application for dispute resolution. I find the Landlord did not properly submit a revised claim for cleaning costs as an Amendment through the RTB DMS Dispute Access site and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 4.1.

The Tenant raised issue with this, and I find the Tenant was not given a full opportunity to prepare their rebuttal and evidence for the matter. I decline to proceed on this claim as I find it would be procedurally unfair towards the Tenant. As such, this claim 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 Order requested under section 38 of the Act, or is the Tenant entitled to the return of the security deposit that the Landlord is retaining without cause?

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. Section 38(6) states if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit

As the Landlord confirmed that they received the forwarding address on October 11, 2024, and the Landlord made their application on November 5, 2024, I find that the Landlord did not make their application within 15 days of the forwarding address being provided. As the Landlord failed to comply with subsection (1) of the Act, I find they may not make claim against the deposit and must pay the Tenant double the amount of the security deposit.

The Landlord testified that the Tenant claimed an incorrect amount of \$1,800.00. In this case, I would expect the Landlord to return the amount of \$1,500.00 as they confirmed this amount for the security deposit. I

The \$1,500.00 security deposit has accrued \$71.63 in interest. I grant the Tenant a monetary award in the amount of \$3,071.63 (double the security deposit, plus interest).

Is the Tenant entitled to recover the filing fee?

As the Tenant was successful in their application for double the return of their security deposit, I grant the Tenant the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$221.63** under the following terms:

Monetary Issue	Granted Amount
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Monetary Award for double the return of their security deposit plus interest.	\$3,071.63
To recover the filing fee for this application from the Landlord under section 72 of the Act.	\$100.00
Minus monetary award granted to the Landlord for compensation for unpaid rent.	-\$2,950.00
Total Amount	\$221.63

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** to be enforceable. 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: January 24, 2025

Residential Tenancy Branch