

DECISION

Introduction

This hearing dealt with an application filed by both the Landlord and the Tenant pursuant to the Residential Tenancy Act (the “Act”):

The Landlord applied 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

The Tenant applied for:

- a Monetary Order for the return of all or a portion of their pet damage deposit under sections 38 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified that they served the Tenant with their Proceeding Package on November 26, 2024, by FedEx Courier Services due to the Canada Post Strike. The Landlord submitted an RTB-55 Proof of Service document containing a tracking number and a FedEx receipt showing the address to which the package was sent and the indication that a signature was requested. The Landlord testified that although they sent the package to the Tenant at the forwarding address provided as their forwarding address, the package was returned to the Landlord’s address after having been refused.

The Tenant testified that they believe their must have been some confusion and that is why the package was not delivered. The Tenant testified that they may have been in the hospital as they were in the hospital for one day in November.

A review of the FedEx tracking service shows that delivery was attempted at the Tenant's address on November 28, 2024, and the package was refused.

Based on the foregoing, I find the Landlord provided sufficient evidence to support that they served the Tenant with the Proceeding Package to the address provided by the Tenant as their forwarding address in accordance with the Director's Order authorizing service by courier during the Canada Post strike.

I accept that the package was refused at the Tenant's address for service. Policy Guideline 12 states that refusal to accept a Registered Mail or Express Post package does not override the deeming provisions of the Act. I find that this policy applies to courier packages sent during the Canada Post strike such is the case here. In the Director's Order a package sent by courier with a signature option is deemed to have been received on the fifth day after the delivery attempt. Based on the foregoing, I find the Tenant is deemed to have received the Landlord's Proceeding Package on December 3, 2024.

The Landlord acknowledged receipt of the Tenant's Proceeding Package by registered mail on January 3, 2024. Based on this confirmation, I find that the Landlord was served with the Tenant's Proceeding Package in accordance with section 89 of the Act.

Service of Evidence

The Tenant acknowledged receipt of the Landlord's additional evidence by Courier. Based on this acknowledgement, I accept that the Tenant was served with the Landlord's additional evidence in accordance with the Director's Order.

Preliminary Matters

The Tenant applied for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement.

However, as the Tenant was informed during the hearing, this application is refused based on section 59(5)(c) of the Act, because I find that the application does not include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings as required by section 59(2)(b) of the Act.

The objective of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. Rule 2.5 of the RTB Rules of Procedures requires to the extent that it is possible, the applicant must submit a detailed calculation of any monetary claim being made.

In this case, the Landlord initially applied for a Monetary Order for damage to the rental unit or common areas in the amount of \$1,250.00. On December 2, 2024, the Landlord amended their application increasing their claim to \$4,389.00. However, in support of their application the Landlord submitted a Monetary Order Worksheet listing damages in excess of \$6,000.00. During the hearing, the Landlord provided a breakdown of their amended claim; however, this breakdown did not align with the figures listed on the Monetary Order Worksheet. Given the inconsistency between the Landlord's amended application and the breakdown submitted on the Monetary Order Worksheet, I find that the Landlord's amended application does not state the full particulars of the dispute that is to be the subject of the dispute resolution proceedings, nor is the breakdown which has been included consistent with the particulars that have been provided in the amended application.

For these reasons, I find the Landlord's application does not meet the requirement of section 59(2)(b) to include full particulars. Accordingly, as the parties were informed at the hearing, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Issues to be Decided

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

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

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

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their pet damage deposit?

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

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, 2023. Monthly rent of \$2,500.00 was due on the first day of the month. The Landlord collected a security deposit in the amount of \$1,250.00, which they continue to hold in trust.

The Landlord is seeking a Monetary Order in the amount of \$2,500.00 for unpaid rent for the month of November. The Landlord testified that the Tenant provided them with written notice to end their tenancy on October 15th, 2024, and vacated the rental unit on October 25, 2024. The Landlord submitted that the Tenant's notice was not sufficient and therefore, the Tenant is responsible for rent for the month of November. The Landlord testified that they did not waive rent for the month of November, nor did they mutually agree to end the tenancy without penalty for the late notice. The Landlord's evidence indicates that they lost two months rent based on the Tenant's insufficient notice to end their tenancy.

The Tenant testified that they verbally notified the Landlord that they would be vacating the rental unit approximately two months prior to vacating. The Tenant testified that they intended to vacate at the end of October, but the Landlord forced them to leave on October 25th, 2024. The Tenant conceded that the parties did not mutually agree in writing to end the tenancy.

The Landlord is seeking authorization to retain the Tenants security deposit in partial satisfaction of their monetary claim.

The Tenant is seeking Monetary Order for the return of all or a portion of their pet damage deposit under sections 38 of the Act

The parties agreed that the Landlord received the Tenant's forwarding address on November 21, 2024, by courier. The Landlord made their application for dispute resolution on November 22, 2024.

Analysis

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

Based on section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear

calendar month before the next rent payment is due and is the day before the day of the month that rent is payable.

In other words, in this case, if the Tenant wanted to end the tenancy by October 31st, 2024, the latest day the Tenant could provide written notice to end the tenancy was September 30, 2024. Instead, the consistent testimony of the parties and the Landlord's documentary evidence shows that the Tenant did not provide written notice until October 15, 2024.

As the Tenant did not provide the Landlord with one clear calendar month's Notice, I find in favour of the Landlord that the Notice to End Tenancy was effective on November 30, 2024.

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, I find that the Landlord has established a claim for unpaid rent owing for November 2024 in the amount of \$2,500.00.

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 \$2,500.00.

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

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 Tenant's forwarding address was received by the Landlord on November 21, 2024, and the Landlord made their application on November 22, 2024, I find that the Landlord complied with section 38 of the Act and made their application within 15 days of the forwarding address having been provided.

Residential Tenancy Policy Guideline 17 states that a landlord who extinguishes the right to claim against the security deposit for damage to the rental unit retains the right to claim against the deposit for any monies owing other than damage to the rental unit.

In this case, I find it is not necessary for me to determine whether the Landlord extinguished their rights in relation to the security deposit because extinguishment only relates to claims for damage to the rental unit. In this case, the Landlords have claimed for losses other than damages to the rental unit including rent.

Based on the foregoing, under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit plus interest in partial satisfaction of the monetary award, as set out below.

Is the Landlord entitled to authorization 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 the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

As I have previously ordered that the Landlord is authorized to retain the Tenant's security deposit, I find that the Tenant is not entitled to a Monetary Order for the return of all or a portion of their security deposit. Accordingly, the Tenant's application for a Monetary Order for the return of all or a portion of the deposit is dismissed without leave to reapply.

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

As the Tenant was not successful in their application, I find they are not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. Accordingly, the Tenant's application for authorization to recover the filing fee for this application from the Landlord is dismissed without leave to reapply.

Conclusion

The Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed with leave to reapply.

The Tenant's application for a Monetary Order for the return of all or a portion of their security deposit under section 38 of the Act is dismissed without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed without leave to reapply.

I grant the Landlord a Monetary Order in the amount of \$1,302.17 under the following terms:

Monetary Issue	Granted Amount
Landlord's Monetary Order for unpaid rent under section 67 of the Act	\$2,500.00
Landlord's authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Landlord's authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 72 of the Act	-\$1,250.00
Interest on Tenant's Security Deposit	-\$47.83
Total Amount	\$1,302.17

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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. 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: February 11, 2025

Residential Tenancy Branch