

DECISION

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (Application) 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
- 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

This hearing also dealt with the tenants' Application under the Act for:

- 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
- an order that the tenancy has ended due to frustration; and
- recovery of the filing fee.

Preliminary Matters

For the sake of brevity, I will not repeat here the information contained in the interim decision dated December 10, 2024. As a result, that decision must be read in conjunction with this decision.

The tenants' claim for an order that the tenancy ended due to frustration is dismissed without leave to reapply, as that matter was previously conclusively dealt with. As part of a settlement agreement reached between the parties at the Residential Tenancy Branch (Branch) on September 25, 2024, under section 63 of the Act, the parties agreed that the tenancy ended by way of mutual agreement that same day. The file number for this dispute is noted on the cover page of this decision.

Settlement agreements reached between the parties under section 63 of the Act are final and binding. As the parties previously agreed that the tenancy ended on September 25, 2024, by way of mutual agreement, how and why the tenancy ended has already been determined. That matter cannot therefore be re-heard or re-decided before me as part of the tenant's Application.

Issues to be Decided

Is the landlord entitled to recovery of unpaid rent or utilities?

Is the landlord entitled to compensation for damage caused by the tenants, their pets, or their guests?

Are the parties entitled to compensation for monetary loss or other money owed with regards to their respective claims?

Are the parties entitled to recover their respective filing fees from each other?

Background and Evidence

The tenancy agreement before me was for a fixed term starting on September 1, 2024, and ending on August 31, 2024. Rent was set at \$2,800.00 and due on the first day of each month. The parties agreed at the hearing that these terms are correct. They also agreed that:

- the tenants left the rental unit to go overseas at the end of April 2024;
- the tenants had no intention of reoccupying the rental unit upon their return;
- the tenants left personal belongings in the rental unit while they were away;
- the tenants sought and were granted permission by the landlord to sublet the rental unit; and
- the tenants requested the landlords help in getting the rental unit sublet for them, to reduce their financial burden over the remaining term of their tenancy agreement.

However, the parties disagreed about whether:

- the rental unit was occupied by other people while the tenants were away;
- the tenants damaged the rental unit, and
- the tenants failed to leave it reasonably clean at the end of the tenancy.

The landlord argued that no subtenants were found by them or the tenants, and as a result, the rental unit remained vacant, save for the furnishings rented to the tenants and the personal belongings they left behind, which the tenants commonly referred to as their "luggage". The landlord stated that as the tenants damaged the unit, and left it dirty, they had to have it cleaned and repaired. As a result, the landlord sought \$590.00 in compensation, \$290.00 for cleaning and \$300.00 for wall repairs. The tenants disagreed, stating that they cleaned the rental unit prior to going on vacation out of the country, and never re-occupied the unit thereafter. They also denied damaging the rental unit.

The landlord sought recovery of \$9,333.00 in outstanding rent they stated was owed by the tenants for June-September 2024 rent. The tenants acknowledged paying only \$1,400.00 of the \$2,800.00 in monthly rent owed for June of 2024, and no rent

thereafter. They also acknowledged that none of the following reasons set out in the Act for lawfully withholding rent apply:

- the tenant overpaid a security deposit or pet damage deposit;
- the tenant completed and paid for emergency repairs, and invoiced the landlord as required, all in compliance with section 33 of the Act;
- the tenant overpaid rent because of an illegal rent increase;
- the tenant received a notice to end tenancy for landlord's use of property, which entitled them to withhold the amount of rent withheld as compensation for being served with that notice;
- the tenant had an order for the Residential Tenancy Branch (Branch) at the time the rent was withheld, allowing them to withhold that amount; or
- the tenant had the landlord's consent to withhold the rent.

Despite the above, the tenants denied owing the landlord any rent. They argued that while they were away on vacation out of country, the landlord rented out their unit, and therefore they should not have to pay the landlord rent for that time period. The landlord denied this, stating that while they assisted the tenants in advertising and showing the rental unit for sublease at the tenant's request, no subtenants were ultimately found. They denied occupying or allowing anyone else to occupy the rental unit. However, they acknowledged that they, their agent, repair people, and cleaners entered the rental unit to prepare it for showings and to show the unit to prospective subtenants, all to assist the tenant's in mitigating their own loss.

The tenants agreed that they requested the landlord's permission to sublet the rental unit, as well as their help in subleasing it while they were away, as they had no plans to reoccupy it. However, they argued that the landlord and their agents entered the rental unit without proper notice, which constitutes a breach of the Act. They also accused the landlord and their agents of causing damage and uncleanliness to the unit during these entries, and of removing the lock to the rental unit. As a result, they sought \$4,200.00 in compensation from the landlord. While the landlord acknowledged that the lock was briefly removed so that it could be repaired, they stated that it was removed, repaired, and replaced the same day.

The parties also sought recovery of the legal and professional interpretation costs associated with the submission of their respective Applications and evidence, as well as recovery of their filing fees.

Analysis

Is the landlord entitled to recovery of unpaid rent or utilities?

Section 26 of the Act states that tenants must pay rent on time and in-full as set out in their tenancy agreement, whether or not the landlord complies with the Act, regulation, or tenancy agreement, unless they have a right under the Act to deduct or withhold it.

Based on the tenancy agreement and the testimony of the parties, I find that the tenants were required to pay \$2,800.00 in rent on the first day of each month during the entirety of the tenancy, which ended on September 25, 2024, by way of mutual agreement. The parties agreed that only \$1,400.00 was paid in rent for June of 2024, and that no rent was paid by the tenants thereafter. The tenants also acknowledged that none of the lawful reasons for withholding rent apply. As a result, I grant the landlord \$9,295.08 for outstanding rent as follows:

- \$1,400.00 for June 2024;
- \$2,800.00 for July 2024;
- \$2,800.00 for August 2024; and
- \$2,295.00 in pro-rated rent for September 1, 2024-September 25, 2024.

Although the landlord may well have been entitled to recover full rent for September 2024, they did not seek recovery of full rent for that month. Instead, they sought recovery of only pro-rated rent up to September 25, 2024. While the landlord calculated pro-rated rent to be \$2,333.00, I find this amount to be inaccurate. Based on a monthly rent amount of \$2,800.00, the per-diem rate for rent in 2024 would have been \$91.80, as there were 366 days in 2024. I therefore find that pro-rated rent for September 2024 up-to and including September 25, 2024, was only \$2,295.00. As a result, I have granted the landlord only \$2,295.00 for outstanding September 2024 rent.

Is the landlord entitled to compensation for damage caused by the tenants, their pets, or their guests?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

To be awarded compensation for a breach of the Act, the party seeking compensation must satisfy me on a balance of probabilities that:

- the other party failed to comply with the Act, regulation, or tenancy agreement;
- loss or damage resulted from this failure to comply;
- the amount of or value of the damage or loss; and
- the party seeking compensation acted reasonably to minimize that damage or loss.

Although the landlord claimed that the tenant's caused damage to the rental unit, they failed to satisfy me of this on a balance of probabilities. There was no move-in condition inspection report completed by the landlord at the start of the tenancy as required. Further to this, the only evidence submitted by the landlord of the state of the rental unit at the start of the tenancy was a single undated photograph, which I do not find either reliable or compelling with regards to the state of repair of the rental unit at the start of the tenancy. Finally, there was agreement between the parties that numerous individuals had access to the rental unit on behalf of the landlord while the tenants were away for several months.

As a result, I am not satisfied that the wall or cabinet damage was caused by the tenants or persons permitted on the property by the tenants, during the tenancy. This damage may well have pre-existed the start of the tenancy or been caused by the landlord, their agents, or prospective subtenants permitted access to the property by the landlord while the tenants were out of the country for several months. I therefore dismiss the landlord's claim for recovery of \$300.00 in repair costs without leave to reapply.

I also dismiss the landlord's claim for recovery of \$290.00 in cleaning costs without leave to reapply. While the tenants were required under section 37(2)(a) of the Act to leave the rental unit reasonably clean at the end of the tenancy, I am satisfied by the landlord's cleaning invoice that the landlord had the unit cleaned on August 23, 2024. This is during the tenancy. As a result, I do not find that these cleaning costs were the result of a breach of section 37(2)(a) of the Act by the tenants. While the landlord may have done this to assist the tenants in subletting the unit, they had no legal obligation under the Act to do so. I am also not satisfied that the tenants agreed to pay for this cleaning, as there is no evidence to that effect, and the tenants argued that the mess was not caused by them, as they had cleaned prior to leaving on vacation.

Are the parties entitled to compensation for monetary loss or other money owed with regards to their respective claims?

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- loss or damage resulted from this failure to comply;
- the amount of or value of the damage or loss; and
- the party seeking compensation acted reasonably to minimize that damage or loss.

The tenants sought \$4,200.00 in compensation because they believe that the landlord rented out the rental unit while they were out of the country, entered the rental unit unlawfully, and removed the lock. However, the landlord denied this and the tenants have fallen significantly short of satisfying me that this is the case, even on the low burden of proof incumbent on them.

It is clear to me from the correspondence before me between the parties that the tenants asked the landlord to assist them in subletting the rental unit, as they were going to be out of the country for several months, were not planning on re-occupying the

rental unit upon their return, and wanted to mitigate their losses. I am also satisfied that the landlord did so by advertising the unit, allowing, and facilitating access by prospective subtenants, and preparing the rental unit for viewing and re-rental. These preparations included but are not limited to, moving personal items belonging to the tenants to an alternate location, and completing cleaning and repairs to make the unit more marketable. I therefore find the tenants' accusations that the landlord and their agents were unlawfully entering their rental unit both bizarre and inaccurate. Despite having no legal obligation to do so given the remaining length of the fixed-term of the tenancy, the landlord agreed that the rental unit could be sublet by the tenants. They even assisted the tenants in attempting to sublet it, which again, they were under no obligation to do. I therefore find it illogical for the tenants to now argue that the landlord, in assisting the tenants as requested, violated their rights under the Act.

Further to this, the tenants have not satisfied me that other persons ever occupied the rental unit while they were away. Although the tenants submitted a brief video and several texts from a neighbour regarding activity at the rental unit, I find that this evidence falls woefully short of establishing that the landlord rented it out for their own benefit. The video is short, grainy, and shows nothing other than a person entering the unit. The texts are also unconvincing, as they lack detail and make only broad statements such as that people have been entering, a light outside has been on, and they saw a person with a bag.

As it is already well established that the landlord, agents and contractors for the landlord, friends of the tenants, and prospective subtenants all had access to the rental unit while the tenants were away, I find it just as likely as not that the activity shown in the video and witnessed by the neighbour is the coming and going of the above noted people, rather than undisclosed new occupants of the rental unit as alleged by the tenants. I also do not find the picture taken on behalf of the tenants of things allegedly moved around compelling, as the parties agreed that the landlord would move things, clean, and complete repairs to help with finding subtenants.

Overall, I find it more likely than not that the tenants, having been unsuccessful in finding subtenants to take over their tenancy agreement, and having been out of the country for several months while not paying the rent owed, are simply grasping at straws and making speculative arguments in the hopes of reducing the amount of outstanding rent they owe. As a result, and as the tenants have not satisfied me of their above noted claims, I therefore dismiss their claim for \$4,200.00 in compensation without leave to reapply.

Although the parties each sought recovery of their respective legal and interpretation fees, I dismiss these claims without leave to reapply. These amounts are not recoverable under the Act. As a result, I have dismissed these claims without leave to reapply.

Are the parties entitled to recover their respective filing fees from each other?

Recovery of the filing fee under section 72 of the Act is at my discretion. As I have dismissed all the tenants' claims without leave to reapply, I decline to grant them recovery of their filing fee. However, as the landlord was successful in the largest part of their monetary claim, I grant them recovery of their \$100.00 filing fee from the tenants under section 72(1) of the Act.

Conclusion

I grant the landlord's claims for recovery of unpaid rent and the filing fee. Pursuant to section 67 of the Act, I therefore grant the landlord a monetary order in the amount of **\$9,395.00**.

The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** by the landlord as soon as possible. Should the tenants fail to comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than \$35,000.00.

The landlord's remaining claims are dismissed without leave to reapply. The Tenants' claims are dismissed, in their entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: March 19, 2025

Residential Tenancy Branch