

## **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
- 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 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 dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- for the return of the security deposit
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Only the Landlord's agent appeared.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Tenant JS was served on January 28, 2025, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant NS was served on January 28, 2025, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

The Landlord stated that the packages were sent to the forwarding address given by the Tenants and the packages were returned "Recipient not located at the address provided". Filed in evidence is a copy of the forwarding address given by the Tenants.

The Landlord stated that when they received the Tenants' application for dispute resolution it had a different rental unit number, then given in their forwarding address. The Landlord stated that the unit number given in the forwarding address was 603, not 608 as shown in the Tenants application. This is supported by the Tenants evidence.

The Landlord stated that on March 17, 2025, they resent the original packages to the unit number identified in the Tenants application. The Landlord provided copies of the Canada Post Customer Receipt containing the tracking number to confirm this service, which shows the package was successfully delivered.

## **Issues to be Decided**

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

Is the Landlord entitled a Monetary Order for money owed?

Is the Landlord entitled to keep the security deposit?

Is the Landlord entitled to recover the cost of the filing fee for this application from the Tenants?

Are the Tenants entitled to the return of their security deposit?

Are the Tenants entitled recover the filing fee for this application from the Landlord?

## **Background and Evidence**

The parties entered a fixed term tenancy which began on September 1, 2024, and was to expire on August 31, 2025. Rent in the amount of \$2,795.00 was payable on the first of each month. The tenant(s) paid a security deposit of \$1,397.50. The tenancy ended on January 2, 2025.

The Landlord testified that on December 12, 2024, the Tenants gave notice to end their tenancy because they were not happy with the humidity in the rental unit and did not want to use the fans to avoid unnecessary electrical consumption. Filed in evidence is copy of the Tenant's notice to end tenancy

The Landlord stated that the because of short notice and the time of the year they were unable to find a new renter for any portion of January 2025; however, they were able to re-rent the premises for February 2025. The landlord seeks to recover unpaid and loss of rent for January 2025, in the amount of \$2,795.00.

The Landlord stated that the tenancy agreements provided a clause that if the Tenants breach the fixed term agreement, they are entitled to recover liquidated damages for the

cost of re-rent the premises. The Landlord seeks to recover the amount of \$2,795.00 as agreed upon in the tenancy agreement.

## Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed
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I accept the evidence of the Landlord that the Tenants breached the Act, when they gave notice to end the tenancy on December 12, 2024, and vacated the rental unit approximately two weeks later. I find the Tenants breached section 45 of the Act, as the earliest date they could have ended the tenancy was August 31, 2025.

I accept the Landlord suffered a loss of rent for January 2025, as two weeks is not sufficient notice to even give the Landlord a fair opportunity to rent the unit. I find the Tenants owe rent for January 2025, in the amount of **\$2,795.00**.

I find the Landlord did mitigate the loss as they found a new renter for February 2025.

As I have found the Tenants breached the fixed term agreement and the tenancy agreement allows the Landlord to collection liquidated damages, which is not a penalty. I find the Tenants owe liquidated damages in the amount of **\$2,795.00**.

Therefore, I find the Landlord has established a monetary claim of **\$5,690.00**, comprised of the above amounts and the \$100.00 to recover the cost of the filing fee.

I find the Landlord is entitled to keep the security deposit, and interest of \$1,413.31 to offset the amount owed. I find the Landlord is entitled to formal order for the balance due in the amount of **\$4,276.69**.

The Tenants application for the return of their security deposit and the request to recover the cost of the filing fee is dismissed without leave to reapply.

## Conclusion

The Landlord is granted a monetary award and is authorized to keep the security deposit and interest in partial satisfaction of their claim. The Landlord is granted a formal order, pursuant to section 67 of the Act. This Order may be filed in the Provincial

Court for enforcement. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant.

The Tenants' application is dismissed 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: April 3, 2025

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Residential Tenancy Branch