

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

This matter was heard on April 3, 2025, and a Decision and Order were made. On April 10, 2025, the Tenants' made an application for review consideration, which on April 11, 2025, I considered the Tenants' application and granted a new hearing on the basis the Tenants unable to attend the original hearing and the original decision and order were suspended until the outcome of this hearing. I can vary, set aside, or confirm the original decision.

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 either party entitled to the security deposit?

Is either party entitled recover the filing fee?

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 December 31, 2024, and the moveout condition report was completed 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.

The Tenant testified that on August 24, 2024, they received the keys early as they wanted to paint the walls, and the Landlord had agreed to replace the carpet as it was damaged. The Tenant stated that nothing was working, and they notified the Landlord on August 24, 2024. The dishwasher was broken, a light fixture was broken with no light bulbs, hinges on cabinets were broken, the faucet in the master bathroom needed to be replaced and the Landlord ignored their requests. The Tenant stated that they sent another message to the Landlord August 29, 2024.

The Tenant stated that at the end of October 2024 the Landlord did replace the dishwasher, washer, and dryer. The Tenant stated that the carpet was not replaced, the rental unit was moldy because the humidity in the rental unit was high. The Tenant stated that they did not want to run the fans for 24/7 as directed by the Landlord as they did not believe a fan should be able to run for that length of time and believed this could create an electrical fire. The Tenant stated that they had a technician in, and they replaced a fuse to the fan. The Tenant stated that they had informed the Landlord on December 8, 2024, if the repairs were not completed that they would end the tenancy at the end of December 2024, and the Landlord sent them a link if they wanted to end the tenancy.

The Landlord argued when they showed the rental unit to the Tenant, they told the Tenant that the Landlord would not be repainting the rental unit and the carpet would

not be replaced as there was only minor fraying at the entrance. The Landlord stated that the Tenant said that they wanted to paint; however, they informed the Tenant that the Landlord would not compensate them, and why would they want to do so. The Landlord stated that when they were notified that the dishwasher and washer and dryer were not working, they sent out a technician and then the appliance were replaced in a timely manner.

The Landlord argue with regards to the humidity the Tenants took it upon themselves to turn off the fan that will run to keep the humidity down. The Tenants had also blocked the bottom of the doors, and it blocked the fresh air return that allowed for airflow. The Landlord stated that the fans can run for multiple hours, and they told the Tenants to keep them running until the humidity came down. The Landlord stated that there has never been a humidity issue before the Tenants moved into the rental unit and they told the Tenants if they did not get the humidity down and run the fans that they could be causing damage to the property.

The Tenant responded that they were told to unblock the doors, but they were also told to keep both fans on and open the door and window to get the humidity down, but that was not working as it was wintertime, and this was not the solution.

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

In case where a Tenants ended the tenancy based on a breach of a material term of the tenancy agreement. A material term is a term that the parties both agreed is so important that the most trivial breach of the term gives the other party the right to end the tenancy. I find the burden of proof is on the Tenant to prove a breach of a material term of the tenancy agreement by the Landlord.

The Tenants provided no supporting evidence, such as photographs that the rental unit does not comply with the health, safety and housing standard required by law, and having regard for the age, character, and location of the rental unit.

The Landlord did not agree to repaint the rental unit or replace the carpets as this would have been agreed upon in the move-in condition inspection report. If the Tenants chose

to paint the rental unit that was their personal choice. While I accept the Tenants request to repair the appliances may have taken longer than it should have; however, these items were replaced in October 2024 and would not be cause to give notice to end the tenancy on December 12, 2024. Further, while the Tenant indicates other requested repairs during their tenancy were not done, this does not lead me to believe these items, such as a broken hinges would not meet housing standards as these were minor in nature or would not be a breach of material term.

While I accept there was a humidity issue; however, humidity can be caused by the changing seasons, and the outside environment. Lower temperatures outside can cause the interior windows to sweat when the warm interior air contacts the cool surface of the glass. Daily activities can be the cause of high humidity levels within the home, such a hot shower, or cooking. This is not the fault of the Landlord.

Further, if the Tenant had a fused replaced for the fan, then clearly the fan was adequately working. I find it more likely than not that the Tenants were not using the fans, as it was found to be off when the Landlord inspected the premises. Further, it would be unreasonable for the Tenant to inform the Landlord on December 12, 2024, that they were no longer going to use the fans to avoid unnecessary electrical consumption. The fan is not using unnecessary electricity as it is a tool that is used to help remove moisture from the air.

Based on the above, I find that the Tenants have failed to prove the Landlord has breached a material term of the tenancy agreement, which would permit the Tenants to end their fixed term agreement.

I accept the evidence of the parties that the Tenants 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

Based on the above, the original decision made on April 3, 2025, is varied by this decision. The Monetary Order issued on April 3, 2025, is confirmed and remains in full force and effect.

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: May 13, 2025

Residential Tenancy Branch