



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice")

The landlord's application is seeking orders as follows:

- an Order of Possession based on unpaid rent
- a Monetary Order for unpaid rent
- a Monetary Order for damage to the rental unit or common areas
- a Monetary Order for a monetary loss or money owed
- 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

The hearing started at 9:30 a.m. and I left the conference open for the tenant to connect until 10:15 a.m. In the absence of the tenant, under Rule 7.1 and 7.3 of the Rules of Procedure, I order the tenant's application dismissed, without leave to reapply.

The tenant vacated the rental unit on September 3, 2023, the landlord is no longer seeking to obtain an Order of Possession.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent to the tenant at the rental unit by registered mail on August 13, 2023, a Canada Post tracking number was provided as evidence of service. I have noted the Canada

Post tracking number on the cover page of this decision. The Canada Post history shows it was refused by the tenant.

I deem the tenant was served on August 18, 2023. I proceeded with the hearing in the absence of the tenant as I find that they have been properly notified.

### **Preliminary Matter**

The landlord submitted into evidence a tenancy agreement dated August 6, 2020, with two tenants.

The landlord submitted into evidence that the co-tenant moved out and the landlord allowed the tenant to take over the lease. A new form K stating the tenancy commencing date of October 1, 2021, was signed by the tenant that same day.

The tenant's application for a Dispute Resolution hearing states that they are the only tenant in the tenancy agreement.

Based on the evidence from both parties, I accept that there is only one tenant in the tenancy agreement.

### **Issues to be Decided**

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

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

Evidence was provided showing that this tenancy began on August 6, 2020, with a monthly rent of \$1,650.00 due on first day of the month, with a security deposit in the amount of \$825.00.

The landlord testified that tenant was owing \$650.00 for October 2022 rent, \$1,650.00 for November 2022 rent, \$1,150.00 for December 2022 rent, \$1,650.00 for January 2023 rent, \$1,650.00 for August 2023 rent, \$1,650.00 for September 2023 rent for a total of \$8,400.00.

The 10 Day Notice was attached to the tenant's door on August 1, 2023. The tenant's evidence states that they received it on August 4, 2023.

The Notice was entered into evidence by both parties for unpaid rent in the amount of \$6,750.00 due on August 1, 2023. Signed and dated August 1, 2023, with an effective date of August 14, 2023.

The landlord submitted into evidence #RTB-27 Condition Inspection Report dated September 1, 2020, with only the landlord's signature.

The landlord testified that they provided the tenant with 3 attempts (August 30, 2023, September 1, 2023, and September 3, 2023) to do a move-out inspection.

The landlord testified that the tenant did not provide a forwarding address.

The landlord testified the following:

- a junk removal company had to be hired to remove the items left in the unit – a receipt for \$282.97 and photos of the items were submitted into evidence;
- a locksmith had to be hired to rekey the unit door as only one of two sets of keys were returned – a receipt for \$460.78 was submitted into evidence;
- repairs needed to be done to the bathroom door, holes in the walls, closets, kitchen cabinets, dishwasher, and the walls needed to be sealed and painted due to smoke damage – a quote was provided for \$3,675.00;
- a cleaning fee of \$420.00 – no proof of payment was submitted; and
- the tenant returned one of two fobs – an email from the Strata was submitted showing the fob fee – no receipt was provided.

The landlord testified that they re-rented the unit for September 1, 2023, for a new rent amount of \$2,200.00 and because the tenant did not move out until September 3, 2023, they had to cancel the new agreement made, which resulted in a loss of rental income of \$2,200.00 for that month.

## **Analysis**

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

### **Is the landlord entitled to a Monetary Order for unpaid rent?**

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.

I find the landlord is entitled to a Monetary Order for unpaid rent under section 55 of the Act, in the amount of \$8,400.00.

### **Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?**

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

### **Junk Removal**

Section 37 of the Act states that at the end of the tenancy, the tenant must leave the rental unit clean.

I accept the landlord's testimony that a junk removal company had to be hired to remove the items left behind by the tenant. The landlord provided photos of the items left behind and a receipt for \$282.97. The landlord has established a claim that a loss existed.

### **Rekey Unit Door**

Section 37 states that at the end of the tenancy, the tenant must give the landlord all the keys that allow access to the residential property.

I accept the landlord's testimony that only one key of two was returned and the landlord had to hire a locksmith to rekey the door. The landlord provided a receipt for \$460.78. The landlord has established a claim that a loss existed.

### **Damages**

The landlord provided a quote for damages totalling \$3,675.00. The landlord did not provide any documentary evidence to support that the repairs were completed. The landlord did not provide sufficient evidence to prove that a loss existed.

## **Cleaning**

The landlord did not provide any documentary evidence to support that cleaning was done to the rental unit. The landlord did not provide sufficient evidence to prove that a loss existed.

## **Fob**

The landlord did not provide any documentary evidence to support that the fob was replaced. The landlord did not provide sufficient evidence to prove that a loss existed.

## **Summary**

I find that the landlord has established a claim for loss for the junk removal and re-keying of the tenant's door for a total amount of \$743.75. The amounts claimed are reasonable, the amounts claimed were incurred because of the tenant's negligence, and the amounts claimed are supported by documentary evidence. Therefore, I find the landlord is entitled to a Monetary Order for the loss under sections 32 and 67 of the Act, in the amount of \$ 743.75.

I find that the landlord has failed to meet the burden of proof on a balance of probabilities for the damages, cleaning, and replacement fob. Therefore, the landlord's claim for the damages, cleaning, and replacement fob are dismissed, without leave to reapply.

## **Is the landlord entitled to 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, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord did not take reasonable steps to mitigate their loss by re-renting the unit for \$2,200.00, an amount that is \$550.00 more a month than what the tenant was paying.

For the above reasons, the landlord's application 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 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 award requested?**

I find that the tenant failed to provide their forwarding address to the landlord in writing as required under the Act. Therefore, I find the tenant extinguished their right to the return of their deposit under section 39 of the Act.

Interest in the amount of \$12.60 accrued on the deposit from August 5, 2023, to October 12, 2023. The total amount of the deposit plus interest held in trust by the landlord is \$837.60.

Under section 72 of the Act, I allow the landlord to retain the tenant's security deposit of \$825.00, plus interest, in partial satisfaction of the monetary award.

**Is the landlord entitled to recover the filing fee for this application from the tenant?**

As the landlord was partially successful in their application, I find that the landlord is entitled to recover \$50.00 of the filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant the landlord a Monetary Order in the amount of \$3,268.20 under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for under sections 32, 55, and 67 of the Act	\$3,268.20
authorization to retain all of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 72 of the Act	-\$837.60
authorization to recover a portion of the filing fee for this application from the tenant under section 72 of the Act	\$50.00
<b>Total Amount</b>	<b>\$2,480.60</b>

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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application 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: October 13, 2023

---

Residential Tenancy Branch