

## **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 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 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:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 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)**

I find that the tenants Tenant JKK and KC were served on October 23<sup>rd</sup>, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing on October 18<sup>th</sup>.

I find that the landlord BVJ was served on October 25<sup>th</sup>, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing on October 20<sup>th</sup>. The tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Preliminary Matters**

*Residential Tenancy Branch Rules of Procedure*, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted the application.

## **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 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?

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

Is the tenant entitled 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 September 15, 2022, with a monthly rent of \$1,850.00, due on first day of the month, with a security deposit in the amount of \$750.00 and a pet deposit also in the amount of \$750.00.

The Landlord submitted a condition inspection report, dated September 15<sup>th</sup>, 2022 for the beginning of the tenancy, apparently signed by the tenant JKK. The authenticity of this report was vigorously disputed by the Tenants.

The Landlord testified that the tenants left the rental unit on September 30<sup>th</sup>, 2023, just one day after giving notice to end tenancy on September 29<sup>th</sup>, 2023. He testified that the tenants left many of their belongings behind, necessitating their removal and the cleaning of the rental unit. The Landlord provided receipts for these costs.

The Landlord testified that he provided a first opportunity to the Tenants to conduct a final condition inspection on October 2<sup>nd</sup> at 10:15 AM. The Landlord testified that he provided a final condition inspection notice to the Tenants to inspect on October 12<sup>th</sup>,

2023 by registered mail. The Tenants did not attend to inspect the rental unit at either time.

The Tenants testified that on September 21<sup>st</sup>, 2023 they informed their landlord by text message that they had discovered a bedbug infestation in their rental unit. They attributed the infestation to an infestation in an adjacent apartment. The Tenants testified that the Landlord denied responsibility for removing the bedbug infestation and instead proposed that the tenants pay for fumigation and leave the unit by October 1<sup>st</sup>.

The Tenants testified that they provided their forwarding address by text message and by email, and finally by registered mail on October 1<sup>st</sup>, 2023.

The Landlord testified that he did, in fact, have the rental unit fumigated for bedbugs after the tenancy ended and before re-renting the unit on October 15<sup>th</sup>, 2023.

## **Analysis**

### **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.

The tenants left after providing less than a month's notice to the landlord. I find that the tenancy ended on September 30<sup>th</sup>, 2023. The landlord's claim is therefore for damages due to the insufficient notice.

The tenant's evidence was that they left the unit on September 30<sup>th</sup> because they had discovered bed bugs in the unit on September 20<sup>th</sup>, were unable or unwilling to continue to reside there, and the landlord denied responsibility for exterminating the bedbugs.

The Landlord GVJ in the hearing took the position that it was not the landlord's responsibility to remediate a bedbug infestation. He also suggested that the tenants were the likely source of the infestation, while also acknowledging that bedbugs are a common problem in the area.

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.

Here, the landlord suffered a loss of a half-month's rent. I find that the landlord minimized his loss, and has demonstrated the actual amount required to compensate his loss. The sole issue is whether the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement.

In this instance, the landlord had announced his intention not to exterminate the bedbugs to the Tenants. He took the position it was their responsibility. In order to re-rent the rental unit, however, the unit had to be cleared of bedbugs. Because the landlord would not do this during the tenancy, he needed to do this following the tenancy. The length of notice given by the Tenants would not affect this: there is no indication the situation would have changed had the Tenants given the one month notice required under the Act.

The question this claim turns on, then, is whether the Landlord had an obligation to exterminate the bedbugs. I find the Landlord was obligated to exterminate the bedbugs under section 32 of the Act, which requires landlords to maintain residential property in a state that "makes it suitable for occupation".

I find that the presence of bedbugs makes a rental unit unsuitable for occupation. There is no evidence before me that the Tenants introduced the bedbugs, and I accept the evidence that there was another bedbug infestation in the same building. Because the Landlord needed to exterminate the bedbugs prior to re-renting the unit, and because he communicated that he would not undertake to do so during the tenancy, I find that the insufficient notice did not cause a loss.

For the above reasons, the landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, with leave to reapply.

### **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.

The landlord makes three types of claims in relation to the rental unit: the cost of repairs, the cost of removing the tenant's belongings; and the cost of cleaning the rental unit. I will deal with the first issue separately.

The landlord provided evidence showing that a banister needed repair, and the tenants did not dispute the question. In addition, the landlord provided adequate evidence to support two other claims for the cost of repair: damage to trim and damage to a window screen. I find that the landlord has not demonstrated that the damage to the walls went

beyond what is ordinary wear and tear associated with the hanging of typical household decoration. The landlord submitted an itemized receipt from the repairer, and I find that the \$150 in relation to the trim, \$112.50 in relation to the window screen and \$18.75 in relation to the banister are proved losses. GST was charged on the invoice, which brings the total to \$295.31.

The second two heads of damage both relate to the condition the tenants left the rental unit in. As with the damages claimed with respect to the insufficient notice considered above, the question is what caused the loss: the Tenants' breach of the Act, or the Landlord's breach. The Tenants left many of their possessions behind, including beds, in violation of section 37 of the Act, which provides that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear". The Tenants submit that the reason they left many of their belongings behind was that they wished to ensure that they did not take bedbugs with them and I accept this evidence.

As I have already found, the landlord failed to maintain the property in conformity with section 32 of the Act. The landlord's failure to do so and declared unwillingness to remedy the situation resulted in the Tenants abandoning their goods. Had the Tenants hired someone to remove and dispose of their goods from the rental unit, the Tenants would be able to recover that cost from the Landlord as a loss caused by the Landlord's breach of the Act. The need to remove the Tenants' goods and clean the unit I find was due to the Landlord's breach of the Act. I therefore make no award under this heading.

For the above reasons, the landlord's application for a Monetary Order under sections 32 and 67 of the Act is granted in the amount of \$295.31.

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

As the landlord was largely unsuccessful in this application, the landlord's application for authorization to recover the filing fee for this application from the tenant under section 72 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?**

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

Under Section 24(2) of the Act, the right of the landlord to claim against a security deposit is extinguished if the landlord does not complete a move-in condition inspection and provide a report to the tenants. The validity of the move-in condition inspection report was vigorously contested. I make no determination on the issue of the move-in condition inspection report, because even if it was properly conducted, I find that the landlord's entitlement to the security deposit was extinguished by his failure to make two appointments for the Tenants to complete a move-out condition inspection.

Sections 16 and 17 of the Regulations lay out the requirement to provide two opportunities to inspect. In this case, the Landlord did not meet the requirement to attempt to arrange a condition inspection. With respect to the supposed October 2<sup>nd</sup> opportunity to inspect, I cannot find that this date was provided as a proposal for a condition inspection. The text messages from the Landlord are not compelling or official notices of a condition inspection. I find that the initial proposal to meet did not clearly identify the purpose of the proposed meeting; even if I did find it to be such a notice, by saying that the Tenants did not need to attend, the Landlord withdrew the proposed appointment.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) 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, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

The landlords provided their forwarding address by email on the 29<sup>th</sup> of September, by text (with a postal code) on the 1<sup>st</sup> of October, and by registered mail on the 31<sup>st</sup> of September. Text and email are not provided as means of service under the Act, and therefore I find the forwarding address was deemed served on October 5<sup>th</sup>, 2023 five days after the registered mailing, in accordance with section 90 of the Act.

The Landlord made an application to retain part of the security deposit on October 16<sup>th</sup>, within the time limit provided under the Act, and so I find the Landlord is not required to pay double the security deposit under section 38(6) of the Act.

However, the Landlord's entitlement to retain the security deposit has been extinguished. The Tenants are entitled to the return of their security deposit, together with interest calculated in accordance with the regulations in the amount of \$27.94.

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

As the Tenants were successful in their application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

### **Conclusion**

I grant the Tenants a Monetary Order in the amount of **\$1,322.63** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
Return of the Security Deposit	\$1,527.94
(less) repair costs to the rental unit	(\$295.31)
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$1,322.63</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

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: December 13, 2023

---

Residential Tenancy Branch