

DECISION

Introduction

This hearing dealt with counterclaim applications including:

The Landlord's August 8, 2023, 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

The Tenants' October 17, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a \$1,900.00 Monetary Order for return of the Security Deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice and Evidence

The Tenants accepted service of Notice and Evidence from the Landlord. The parties agreed that the Tenants did not serve Evidence on the Landlord for their claim and so parties were informed that the Tenants' evidence would not be considered as required by Rule of Procedure 3.3.

The Tenants' Guarantor P.O. requested that the file be adjourned so that they could submit evidence. I considered their request as required by RTB Rule of Procedure 7.8 and 7.9 and found that adjourning would not substantially impact the eventual decision because the Landlord has applied to retain the full value of the security deposit.

Parties were informed that the Landlord is required by RTB Rule of Procedure 6.6 to establish on the balance of probabilities that they are entitled to retain the full value of the \$3,248.00 security deposit as claimed.

I also noted that the Tenants received instructions from their own application as well as instructions from the Landlord's application regarding expectations for service of evidence. I find that the Tenants had more than two months to serve all evidence prior to the January 8, 2024, hearing.

Preliminary Matters

The Tenants were primarily represented by Guarantor P.O. and N.W. who are parents of the group of students who rented the six-bedroom residential property. The parties disputed whether the 3 students as tenants had permission to sublet the property. The Landlord confirmed that they are not seeking compensation for damages they believe directly associated with the subletting. I therefore deemed the issue of subletting, immaterial and advised the parties as such during the hearing.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent in the amount of \$1,614.67 under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas in the amount of \$6,419.42 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 in the amount of \$6,496.00 under section 67 of the Act
- authorization to retain all or a portion of the Tenants' \$3,248.00 security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- Are the Tenants entitled to the return of \$1,900.00 security deposit?
- Is either party entitled to recover the \$100.00 Filing Fee?

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 1, 2022, with a monthly rent of \$6,496.00, due on first day of the month, and a \$3,248.00 security deposit collected. The Landlord confirmed that the tenancy ended on August 31, 2023, and that they continue to hold the full value of the Tenants' security deposit. Copies of the written tenancy agreement and addendums were provided to confirm terms and expectations of the tenancy agreement.

The parties agreed that the residential property is an older house, nearly 100 years old.

The Landlord testified that the property is vintage and furnished as a vintage property which is why the property was furnished with two jukeboxes. The parties agreed that the Tenants signed a Furniture related addendum to the Tenancy Agreement which includes reference to assorted furniture including a Wurlitzer Jukebox and an AMI Jukebox. The Landlord testified that “previous tenants loved the jukeboxes” and that Tenant M.M.O expressed enthusiasm about the jukeboxes.

The Tenants’ Guarantor P.O. testified that the Tenants rented the house because it was on the bus route, and it was getting close to the start of the school term.

The parties agreed that there was an issue with payment of rent to the Landlord for August 2023 and that approximately \$1,614.67 was outstanding. The Landlord filed their application for Dispute Resolution while the tenancy was still ongoing.

The parties agreed there was a Move-In Condition Inspection on September 1, 2022, and Move out Condition inspection on August 31, 2023, attended by the landlord and representatives for the Tenants. There was some confusion during the hearing about dates and means for when copies of the inspection reports were provided. The Tenants Guarantor P.O. stated during the hearing that the Tenants’ forwarding address was provided in October 2023. The Landlord referred to evidence of service provided as confirmation of dates when items were provided.

The parties agreed that the AMI Jukebox was removed from the property during the tenancy. The Landlord testified that it was willfully and maliciously removed at significant effort because the Jukebox weighs at least 500 pounds. The Tenants acknowledged that the AMI Jukebox disappeared during a party. The Tenants’ Guarantor P.O. testified that the Tenants were reluctant to ask that the jukeboxes be removed from the property during the tenancy because they were trying to play nice and make the best of the situation.

The Landlord requested \$6,419.42 in compensation related to anticipated costs of replacing the AMI Jukebox including:

- \$2,683.88 for purchase of a replacement
- \$3,735.54 for shipping and delivery of replacement from the US

The Landlord provided evidence of recent auctions for similar model AMI Jukeboxes to justify the anticipated cost of the replacement. The Landlord also provided estimates of shipping costs for delivery of a replacement jukebox. The Landlord testified that the cost estimates are necessarily high because the AMI Jukebox is a vintage item that cannot be easily replacement. The Landlord did not indicate if either Jukebox has been insured.

The Tenants’ Guarantor P.O. testified that the Landlord’s costs are unreasonable and that the Landlord should have never left the jukeboxes in the residential property. They also testified that the quality of the AMI Jukebox that disappeared was not auction quality like the examples they Landlord referred to for replacement costs. The Landlord

referred to photos submitted of the AMI Jukebox in the residential property to indicate that it was in good working quality. The Landlord also referred to the text of the Tenancy Addendum where the Landlord provided contact information for having the Jukeboxes serviced after use.

It was noted during the hearing, that the following text was also included in the addendum:

“If any items in this addendum are not included, such omission shall not be deemed as a breach of the Tenancy Agreement by the Landlord as Tenants have not paid rental fees for the above furniture”

The Landlord also claimed costs of \$6,496.00 in Liquidated Damages due to the Tenants breaching the Tenancy agreement by subletting the property. The Landlord referred to the clause of the Tenancy Addendum that specifies this requirement for damages. The Tenants’ Guarantor P.O. testified that the Landlord’s claim was unreasonable.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim is responsible for providing evidence over and above their testimony to prove their claim.

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act

The parties agreed that the Landlord is entitled to \$1,614.67 in unpaid rent.

I order that the Landlord will be issued a Monetary Order in the amount of \$1,614.67 under section 67 of the Act.

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report. Section 18 of the further specifies that the Landlord must provide copies of the Inspection report within 15 days of either condition inspection report being completed or the forwarding address being provided.

I reviewed the Landlord’s evidence in detail and note that they documented September 25, 2023, as the date that the Move-Out Condition Inspection report was served to the Tenants.

I reviewed this Report in detail and note that the Tenant M.M.O. provided a forwarding address on August 31, 2023. I also note that this is a different forwarding address than the address provided by the Tenants' Guarantor P.O. in October 2023.

I therefore find that the Landlord failed to provide the text of the Condition Inspection report within 15 days as required by section 18 of Regulations because the intent of this provision is that the Condition Inspection Report be given to the Tenants within 15 days of the first forwarding address being provided to the Landlord.

This means that I find that the Landlord extinguished their right to retain the Tenants security deposit under 36(2)(c) of the Act and that double the value of the deposit must be returned to the Tenants under section 38 of the Act.

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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord failed to establish their claim for damage to the rental unit or common areas because:

- The Landlord did not provide verifiable documentation on the cost of the AMI Jukebox that went missing during the tenancy – they only provided costs of a possible replacement
- The Tenants argued that the quality of the Jukebox that went missing was less than the quality of the Landlord's requested replacement
- The Landlord did not indicate if the missing Jukebox was insured
- The Landlord had the Tenants sign a furniture addendum that included the phrases "tenants have not paid rental fees for the above furniture"
- The Landlord is claiming compensation for an item that the Tenants did not pay rent in exchange for use

Nevertheless, I find that the Landlord is entitled to some compensation because the Tenants acknowledge that the Jukebox was removed from the property without the Landlord's approval during a party. I therefore award the Landlord nominal damages as permitted by RTB Policy Guideline 16 because I recognize a loss was incurred despite the Landlord failing to establish on the balance of probabilities a verifiable financial loss.

I will award \$2,946.91 to the Landlord, recognizing that a unique item was lost during the tenancy. I do not award the Landlord's requested costs for shipping for the reasons identified above.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I find the Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$2,946.91.

Is the Landlord Entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$6,496.00 under section 67 of the Act

I informed the Landlord that I would not consider this claim because I find the text of the Tenancy Addendum inconsistent with the provision for liquidated damages under the Act and RTB Policy Guideline 4. I also informed the Landlord that their claim represents an attempted to contract out of the Act, which is contrary to section 5.

This portion of the Landlord's claim for compensation is therefore dismissed without leave to reapply.

Is either party entitled to recover the filing fee?

The Landlord and the Tenant were both partially successful in their application. As such, I find that neither party is entitled to recover the costs of the filing fee from the other under section 72 of the Act.

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

Section 38 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

As the forwarding address was provided on August 31, 2023, and the Landlord previously made their application on August 8, 2023, I find that the Landlord made their application within 15 days of the tenancy ending and the forwarding address being provided.

However, as noted above, I find that the Landlord extinguished their right to claim against the security deposit because they failed to provide the Tenants with copies of the move-out condition inspection report within 15 days of the first forwarding address

being provided during August 31, 2023, inspection, as required by section 18 of the Regulations. As noted above, the Move-out report was provided September 25, 2023.

I find that the Tenants' security deposit was valued at \$3,313.58 at the day of the hearing according to the online Security Deposit Interest Calculator, having earned \$65.58 in interest while held by the landlord.

As noted above, I find that the Landlord established a claim for compensation in the amount of \$4,561.58:

Rent = \$1,614.67

Damages = \$2,946.91

I find that the Landlord's claim of \$4,561.58 shall be offset against the financial award to the Tenants of \$6,561.58 as required by section 38 of the Act and RTB Policy Guideline 17.

$\$3,248.00 \times 2 = \$6,496.00 + \$65.58 \text{ interest} = \$6,561.58$

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,000.00** under the following terms:

Monetary Award	Granted Amount
To Landlord	
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$1,614.67
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	-\$2,946.91
Total owed to landlord	-\$4,561.58
To Tenants	
a Monetary Order for the Tenant for the return of their deposit(s) from the Landlord	\$6,561.58
Total Amount	\$2,000.00

The Tenants are provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(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: January 18, 2024

Residential Tenancy Branch