



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the Landlord and the Tenants.

The Landlord's application is seeking the following:

- 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 tenants' security deposits in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application

The Tenants application is seeking the following:

- a Monetary Order for the return of all or a portion of their deposits under sections 38 and 67 of the Act

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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

I find that Tenant J.E. was served on August 18, 2023, by registered mail in accordance with section 89 of the Act and is deemed to have received the Proceeding Package in accordance with section 90 of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. I have included the Canada Post tracking number on the cover page.

I find that Tenant K.G. was served on August 18, 2023, by registered mail in accordance with section 89 of the Act and is deemed to have received the Proceeding Package in accordance with section 90 of the Act. The Landlord provided a copy of the

Canada Post Customer Receipt containing the tracking number to confirm this service. I have included the Canada Post tracking number on the cover page.

Issues to be Decided

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 tenants' deposits in partial satisfaction of the monetary award requested?

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

Background and Evidence

I have reviewed all evidence, including the testimony of the Landlord, but will refer only to what I find relevant for my decision.

The Landlord testified that this tenancy began on January 1, 2023, with a monthly rent of \$1,850.00, due on first day of the month. The Tenants paid a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$925.00. Both deposits were paid by the Tenants. The Tenants vacated the rental unit on July 31, 2023.

The following facts are undisputed:

- On December 16, 2023, the Landlord and Tenants entered into a fixed term tenancy agreement commencing on January 1, 2023, to December 31, 2023. The Landlord provided the signed and dated tenancy agreement as evidence.
- On June 26, 2023, the Tenants provided the Landlord a written notice to end tenancy on July 31, 2023. The Landlord provided the written notice as evidence.
- The move-out condition inspection report signed and dated by the Tenants confirms that the Tenants agreed for the Landlord to retain \$50.00 from their security deposit for the paint damage in the living room.

Paint Damage

The Landlord provided an invoice for \$50.00. and photos of the paint damage as evidence.

Loss of Rent

The Landlord testified that the Tenants vacated the rental unit on July 31, 2023. The Landlord was unable to re-rent the rental unit until September 22, 2023. The Landlord is seeking compensation for loss of rent for all of August 2023 in the amount of \$1,850.00 and 21 days in September 2023, totalling \$3,145.00.

Analysis

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.

I accept the Landlord's undisputed testimony and evidence that the Tenants agreed for the Landlord to retain \$50.00 from their security deposit to cover the cost of the paint damage in the living room.

I accept the Landlord's testimony that the Tenants should be responsible to pay for August 2023 rent and 21 days of September 2023 rent totalling \$3,145.00. The Tenants vacated the rental unit prior to the fixed term agreement ending. The Landlord was unable to re-rent the rental unit until September 22, 2023.

I find that the Landlord has established a claim that a loss existed under the Act, regulation or tenancy agreement for the paint damage and loss of rent.

Therefore, I find the Landlord is 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, in the amount of \$3,195.00.

Is the Landlord entitled to retain all or a portion of the tenants' deposits 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 the deposits to the Tenants or make an application for dispute resolution to claim against them. As the forwarding address was provided on July 31, 2023, and the Landlord made their application on August 10, 2023, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' deposits in the amount of \$1,850.00, plus interest, in partial satisfaction of the monetary award.

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

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

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$1,408.20** under the following:

Monetary Issue	Granted Amount
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	\$3,195.00
authorization to retain all of the Tenants' deposits, plus interest in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$1,886.80
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
Total Amount	\$1,408.20

The Landlord is provided with this Order and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 *Residential Tenancy Act*.

Dated: January 09, 2024

Residential Tenancy Branch