

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 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 also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) 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
- a Monetary Order for the return of all or a portion of their security deposit under sections 38 of the Act
- a Monetary Order for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated claims. I considered the Landlord's application in its entirety, and I considered the Tenants' application for a Monetary Order for the return of all or a portion of their security deposit as it was directly related to the Landlord's application, and their filing fee. The Tenants' remaining application is dismissed, with leave to reapply.

Both the Tenants and Landlord attended the hearing and both parties confirmed service of the Notice of Dispute Resolution Proceeding for each application and the evidence for each application.

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' security deposit in partial satisfaction of the monetary award requested or are the Tenants entitled to the return of their security deposit?

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

Are the Tenants entitled to recover the filing fee for their 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.

Both parties testified that this tenancy began around November 2020, by verbal agreement. The monthly rent amount prior to the Tenants moving out was \$1,950.00, paid on the first day of the month. The Tenants paid a security deposit of \$775.00. The Tenants vacated the rental unit on November 30, 2023.

Shower and Bathtub

The Landlord testified that they are seeking compensation for damages caused by the Tenants to the shower and the bathtub in the amount of \$1,659.22.

The Landlord testified that on May 8, 2023, the downstairs resident called them to let them know there was a leak coming from the rental unit. The Tenants did not notify the Landlord of the leak. The Landlord attended the unit on May 10, 2023, and found the whole bathroom had been damaged by the Tenants.

The Landlord provided the following invoices as evidence:

- invoice for the removal and replacement of the shower cartridge. The invoice is dated May 25, 2023, with a balance due of \$781.31
- invoice for the removal and installation of the tub drain. The invoice is dated May 25, 2023, with a balance due of \$515.55
- invoice for the replacement of the shower diverter and handle. The invoice is dated June 2, 2023, with a balance due of \$362.36

The Tenants testified that everything in the unit was old as the building had been constructed in 2006. The Landlord had not made any upgrades to the unit.

The Tenants testified that the plumber advised them that the bathtub leak was caused by the existing crack. The Tenants provided the plumber's report and a photo as evidence.

The Tenants testified that the existing crack was there when the Tenants moved in and they had not caused any damage to the bathtub.

The Tenants testified that the plumber advised them that the diverter had carvings due to age. The Tenants provided the plumber's report and a photo as evidence. The reports also states the shower diverter brass had been eaten away due to normal usage and age.

The Tenants testified that the diverter damage was caused form normal wear and tear and that they had not caused any damage to the diverter.

Security Deposit

The following is undisputed:

- the Landlord did not do a move-in or move-out condition inspection report
- the Tenants provided the Landlord a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit #RTB-47 form in person on November 30, 2023
- the parties did not have an agreement in writing that the Landlord could retain the Tenants' security deposit

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:

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

Proof that the damage or loss exists

The Landlord testified that on May 8, 2023, the downstairs resident called them to let them know there was a leak coming from the rental unit. The Tenants did not notify the Landlord of the leak. The Landlord attended the unit on May 10, 2023, and found there was damage to the shower and bathtub.

The Landlord did not do a move-in or move-out condition inspection report. The Landlord did not provide proof that the damage to the shower and bathtub was caused by the Tenants. I find I am unable to determine if the Tenants actions or neglect caused the damage the Landlord is claiming for the bathtub and shower as the Landlord has not provided sufficient evidence to prove that the damage to the shower and bathtub was in fact caused by the Tenants.

Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act, Regulation or tenancy agreement

The Landlord did not do a move-in or move-out condition inspection report to prove the condition of the rental unit when the Tenants moved in and when the Tenants moved out. Therefore, I am unable to determine if the Tenants actions or neglect caused the damage the Landlord is claiming for the bathtub and shower.

The Landlord did not provide any evidence to prove that the Tenants failed to comply with the Act, regulation, or tenancy agreement.

Proof of the actual amount required to compensate for the claimed loss or to repair the damage

The Landlord provided invoices for the bathtub and shower repairs. The Landlord did not provide proof that these amounts stated on the invoice were paid. The invoices show that there is a balance due. The Landlord did not provide any receipts to prove the amounts showing on the invoices as balances were in fact paid. I find I am unable to determine if the Landlord completed the repairs that are stated in the invoice and if in fact the balance of the invoices are the actual amounts the Landlord paid because the Landlord did not provide proof of payment, such as a receipt.

Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed

To show that steps were taken by the Landlord to minimize the damage they are claiming, they should have some evidence to show what steps they took to make

attempts to mitigate or minimize their loss. I find the Landlord did not provide any evidence to show that steps were taken to mitigate or minimize the damage or loss to the bathtub and shower as required under section 7(2) of the Act.

The Landlord has not satisfied all four elements in the test above.

For the above reasons, the Landlord's application for a Monetary Order for 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 Tenants security deposit in partial satisfaction of the monetary award requested or are the Tenants entitled to the return of their security deposit?

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 security deposit to the Tenants or make an application for dispute resolution to claim against it. As the forwarding address was provided on November 30, 2023, and the Landlord made their application on December 8, 2023, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

Section 38(4) allows a Landlord to retain from a security deposit if, at the end of the tenancy, the Tenant agrees in writing that the Landlord may retain an amount to pay a liability or obligation of the Tenant.

The Tenants did not provide the Landlord an agreement in writing that they could retain the Tenants' security deposit.

I find that there is no evidence provided to show that the Landlord had the Tenants' agreement in writing to keep their security deposit. The Landlord was also not successful in their application for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement to retain the Tenants' security deposit.

Therefore, I find the Tenants are entitled to a Monetary Order for the return of all their security deposit under section 38 of the Act, plus interest in the amount of \$796.31.

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

As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their application.

Are the Tenants entitled to recover the filing fee for their application from the Landlord?

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

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$896.31** under the following:

| Monetary Issue | Granted Amount |
|---|-----------------------|
| A Monetary Order for the return of all their security deposit, plus interest under section 38 of the Act | \$796.31 |
| authorization to recover the filing fee for their application from the Landlord under section 72 of the Act | \$100.00 |
| Total Amount | \$896.31 |

The Tenants are provided with this Order and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

Conclusion

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: April 15, 2024

Residential Tenancy Branch