

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 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

and 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 and/or pet damage 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 Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issues to be Decided

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 Order requested under section 38 of the Act?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit?

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

Is the Tenant entitled to recover the filing fee for this application from the Landlord under section 72 of the Act?

Facts and Analysis

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 agree that the Landlord retains the security deposit of \$850.00 and the pet damage deposit of \$850.00. Both parties agree that the Tenant had a dog.

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

The Landlord provided a \$901.45 receipt for floor repair, drywall patching, and painting, dated August 15, 2024.

The Landlord further provided photographs of the rental unit showing scratches on a door, damaged window and door frames, a scuffed baseboard, damaged flooring, and screw or nail holes in several walls. Some of the damage appears consistent with what a dog could cause.

I find the Landlord has provided sufficient evidence that they are entitled to compensation for damage to the rental unit in the amount of \$901.45.

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

The Landlord provided a \$525.00 cleaning invoice with a due date of July 11, 2024. He further provided photographs showing the rental unit with dirty floors, baseboards, sink, stove, and fridge.

I find the Landlord has provided sufficient evidence that they are entitled to compensation of \$525.00 for cleaning.

Is the Landlord entitled 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?

The Landlord provided a copy of a move in Condition Inspection Report (CIR). It is signed by the Landlord and, who both parties agree, is the other tenant.

Both parties agree that a move out CIR was not completed. The Landlord affirms that they attempted three different times, by text and email, to arrange a time and date for the move out CIR to be done. The Tenant submitted a copy of text message between herself and the Landlord supporting an email request from the Landlord for a mutually agreeable time to do a walk through. In said text message the Tenant confirms that she will get back to the Landlord soon.

I find on a balance of probabilities that the Landlord, at least twice, requested the Tenant provide a time and date to conduct the move out CIR.

Section 17 of the regulations states a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. I find the Landlord asking an open-ended question to the Tenant as to their availability is, for the purposes of the regulations, equivalent to offering multiple dates and times. I also find the Landlord met, but the Tenant did not, the requirement of section 16 of the regulations requiring the landlord and tenant to attempt in good faith to mutually agree on a date and time for a condition inspection.

Therefore, for the above reasons, I find the Landlord has satisfied the requirements of section 35 of the Act regarding the completion of a move out condition inspection. I further find that the Tenant, under section 36 of the Act, extinguished their right to the return of their deposits.

Furthermore, the Landlord read into testimony an email from the second tenant in which that tenant apologises for not cleaning the rental unit properly and for the damage caused. The second tenant further gives permission, in the read email, to the Landlord to retain both deposits as compensation for the state the rental unit was left in.

I find on a balance of probabilities that this email is a valid written permission given to the Landlord by the second tenant that allows the Landlord to retain the security deposit and the pet damage deposit, as allowed under section 38(4) of the Act.

For the above reasons, per section 38 of the Act, I find the Landlord is entitled to retain the full amounts of the security deposit and the pet damage deposit, and that they were entitled to do so without applying for dispute resolution.

Policy Guideline 17 states that in cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the RTA. If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

Per the above guideline, the compensation I find the Landlord is entitled to (\$525.00 and \$901.45, for a total of \$1426.45) shall be offset against the deposits, and although the amount of the deposits exceeds the amount awarded to the Landlord as compensation, the Landlord is also entitled to retain the remaining balance of the deposits and interest.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit?

As I have found that the Tenant extinguished their right to the return of the deposits and that the Landlord is entitled to retain the full amounts of the security deposit and the pet damage deposit, the Tenant's application for a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit is dismissed without leave to reapply.

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

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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

Although, under section 72 of the Act, I may order payment or repayment of a fee under section 59 (2) (c), I decline to do so. The Landlord's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Landlord shall retain the full amount of the Tenant's security deposit, pet damage deposit, and interest, a total amount of \$1763.82, as full satisfaction of the issues before me.

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 5, 2024

Residential Tenancy Branch