

DECISION

Introduction

This hearing dealt with the following applications under the *Residential Tenancy Act* (the "Act"):

The Landlord applied 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
- 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 their filing fee under section 72 of the Act

The Tenant applied for:

- compensation for the return of double their security and pet damage deposits under section 38 of the Act

Preliminary Matters - Service

The Tenant did not call in at the appointed time for their hearing, although the line remained open until 10:30 AM, while I conducted the hearing. I confirmed that the correct call-in number and participant code had been provided in the Tenant's own Notice of Dispute Resolution Proceeding.

I dismiss the Tenant's application in its entirety without leave to re-apply because the Tenant did not attend the hearing set for their application. However, I will still consider the Tenant's request for the return of double their deposit as required under the Act.

The Landlord provided evidence that they served their Proceeding Package to the Tenant by registered mail on December 6, 2022. Although the Landlord confirmed the registered mail was not picked up, I find the Tenant is deemed to have received the Proceeding Package five days after the registered mailing, on December 11, 2022. This is because a party cannot avoid service under the Act and because the Landlord used the Tenant's address for service provided to them by the Tenant on their Notice of Forwarding Address.

Under Rule 7 of the *Residential Tenancy Branch Rules of Procedure*, I conducted the hearing of the Landlord's application in the Tenant's absence.

Issues

1. Is the Landlord entitled to retain the security deposit or the pet deposit?
2. Is the Landlord entitled to compensation?
3. Is the Landlord entitled to their filing fee?

Facts and Evidence

The tenancy began on July 6, 2020. By the end of the tenancy, the monthly rent was set at \$1,624.00, due on the first of each month. The Tenant provided a security deposit of \$800.00 and a pet deposit of \$800.00. Interest of \$20.86 accumulated on the deposits from January 1, 2023 to the date of the hearing.

The Landlord did not complete a move-in inspection at the start of the tenancy. The Landlord did not complete a move-out inspection at the end of the tenancy.

On March 22, 2023, the Landlord issued a Two Month Notice for the Tenant to vacate the rental unit by May 31, 2022.

The Landlord says the Tenant was \$4.00 short for rent for March 2023, and the Tenant did not pay rent for April 2023.

On April 6, 2022, the Tenant gave the Landlord a written notice saying the Tenant would vacate the unit by April 30, 2022.

The Tenant vacated the rental unit without any further communication to the Landlord. The Landlord regained possession of the rental unit on May 5, 2022, although the Tenant may have vacated the unit by April 30, 2022 as stated in their written notice.

The Landlord says the Tenant damaged the rental unit, did not clean the rental unit, left items behind, including garbage and an old couch and a vehicle, and only returned the keys to the Landlord on May 25, 2022. On June 3, 2022, the Tenant removed the truck that was left behind at the property.

On November 17, 2022, the Tenant provided their forwarding address to the Landlord. The Landlord retained the Tenant's deposits, and applied within 15 days, by November 30, 2022, for compensation for unpaid rent, cleaning, damages and repairs to the rental unit, and their filing fee.

The Landlord says the Tenant painted inside the rental unit without permission, including the walls, inside the shower, and some of the Landlord's furniture and the refrigerator. The Tenant changed the exterior locks, interior door handles and thermostats and lighting in the rental unit during the tenancy.

The Landlord provided photographs to show the Tenant removed interior door handles, light fixtures, plumbing fixtures, towel and curtain rods, window coverings, shelving, and thermostats when they left the rental unit and failed to put the original fixtures back into place. Some items were missing and some items that were left behind were re-installed by the Landlord. The Tenant did not clean the rental unit at the end of the tenancy.

The Landlord submitted receipts for electrical work to re-install thermostats and light fixtures for \$223.13, and for the cost for the electrician to test the hot water tank in March 2022, when the Tenant said the hot water was not working, for \$178.50.

The Landlord says the Tenant's pet rabbit chewed the interior baseboards and trim and the pickets of the exterior deck railing. The Landlord explained that they had to replace the pickets in the deck railing to comply with safety standards because if they sanded down the bite marks, the pickets would be too far apart. The Landlord says the Tenant's dog scratched the front door, and the front door was further damaged when the Tenant changed the locks.

The Landlord submitted a spreadsheet outlining their claim for compensation, including rent, receipts from the electrician, labour for cleaning and repairing the rental unit, charged at a rate of \$50.00 per hour, and the cost of materials.

Analysis

1. Is the Landlord entitled to retain the security deposit or the pet deposit?

Under section 38(7) of the Act, a Landlord may only claim against a pet deposit for damages caused by a pet. The Landlord has extinguished their right to hold the pet deposit for damages because they did not complete the required inspections under sections 24 and 36 of the Act.

Therefore, the Landlord must return double the pet deposit to the Tenant under section 38(6) of the Act, plus applicable interest, totalling \$1,610.43.

The Landlord also extinguished their right to hold the security deposit for damages because they did not complete move-in and move-out inspections as required under sections 24 and 36 of the Act.

However, the Landlord applied within 15 days to claim against the security deposit for items other than damages as permitted under section 38(1) of the Act. Therefore, I will not double the value of the security deposit. The value of the security deposit, plus interest, attributed to the Tenant is \$810.43.

2. Is the Landlord entitled to compensation?

The Landlord is entitled to claim for loss and damage, and I will consider that now. I have indicated the amount I will award as compensation to the Landlord in the right-hand column of the table below.

Item	Amount claimed	Allowable amount
March 2023 rent	\$4.00	\$4.00
April 2023 rent	\$1,624.00	0
Materials, paint, fixtures	\$6,491.37	\$5,891.37
Electrical invoice March 2023	\$178.50	0
Electrical invoice May 2023	\$223.13	\$223.13
Repairs, painting, cleaning	\$5,225.00	250
Total	13,746.00	\$6,368.50

Rent

I accept the Landlord's testimony that the Tenant was \$4.00 short on rent for March 2023 and I grant that compensation to the Landlord.

I find on a balance of probabilities the Tenant most likely vacated the rental unit on April 30, 2023, according to their written notice, and the Landlord has not provided any evidence or testimony to dispute this.

Since the Tenant was entitled to one month rent as compensation under the Two Month Notice, I find the Landlord is not entitled to \$1,624.00 for rent for April 2023.

Materials, paint, fixtures

Under section 32 of the Act, the Tenant must repair any damages they cause to the rental unit. I accept the Landlord's testimony that the Tenant removed various lighting and plumbing fixtures and painted the rental unit, including the shower and refrigerator, without permission.

I find the Landlord has established a claim for materials to repaint the rental unit, and to replace and repair various lighting and plumbing fixtures, the deck railing, the shower stall for \$1,549.00, and the refrigerator for \$874.00.

I note the Landlord's claim for materials included \$200.00 for fuel to pick up materials, and \$400.00 for damage to the furniture the Landlord lent to the Tenant. I do not accept these claims because the Landlord has not established that the Tenant breached the terms of the tenancy agreement by painting the furniture.

I grant the Landlord compensation for materials to repair the rental unit in the amount of \$5,891.37.

Electrical Invoices

The Landlord claims \$178.50 for the cost for the electrician to test the hot water tank in March 2022, when the Tenant said the hot water was not working.

The Landlord has not established that the Tenant lied about their issues with hot water. I find it is the Landlord's responsibility under section 32 of the Act to cover this cost as maintenance for the rental property.

The Landlord claims \$223.13 for electrical work completed in May 2023 to re-install thermostats and light fixtures. I accept the Landlord's testimony that the Tenant removed these items, and I find the Tenant was required to re-install them pursuant to section 32 of the Act. I grant this amount of \$223.13 to the Landlord as claimed.

Labour - Repairs, Painting, Cleaning

Under section 37 of the Act, the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I accept the Landlord's testimony and evidence that the unit was not left reasonably clean, and I find the Landlord's claim for \$250.00 based on five hours to clean the interior of the rental unit is reasonable.

I will not award compensation to the Landlord for the remainder of their claim for labour costs because they completed the majority of that labour themselves. The Landlord bears the responsibility to make repairs under section 32 of the Act. There is no indication that they actually incurred the cost they are claiming, for example, the Landlord did not indicate that they lost income from other means of employment due to their time spent repairing the unit.

Summary

The Landlord holds \$2,420.86 in deposits, calculated as double the pet deposit of \$1,600.00, plus the security deposit of \$800.00, plus interest of \$20.86.

The Landlord has established a claim for \$6,368.50 which will be set off from the deposits according to section 72(2) of the Act.

I order the Landlord to retain the Tenant's deposits, valued at \$2,420.86, and I grant the Landlord a monetary order for the balance owing in the amount of **\$3,947.64**.

3. Is the Landlord entitled to their filing fee?

I award the Landlord their **\$100.00** filing fee under section 72(1) of the Act because they were partially successful in their application.

Conclusion

I dismiss the Tenant's application in its entirety, without leave to reapply.

I order the Landlord to retain the Tenant's security and pet deposits.

I grant the Landlord a monetary order for **\$4,047.64**. The Landlord is provided with this order on the above terms and must serve the order on the Tenant as soon as possible. Should the Tenant fail to comply with the order, it 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: September 13, 2023

Residential Tenancy Branch