

## **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
- 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 the return of all or a portion of their security 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 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 retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?
- Is the Landlord entitled to recover the filing fee for this application from the Tenants?
- Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?
- Are the Tenants entitled to recover the filing fee for this 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.

Evidence was provided showing that this tenancy began on either December 15, 2022, or January 1, 2023, with a monthly rent of \$2,400.00, due on first day of the month, with a security deposit in the amount of \$1,200.00.

The Tenants vacated the rental May 31, 2023, and the parties agree the forwarding address was provided June 1, 2023.

The Landlord filed an application to claim damages and requested to retain the security deposit. The Landlord advised the rental unit was built in 2015. The Tenants filed a cross application requesting the return of their security deposit.

The parties advised that no move-in inspection report was completed upon the Tenants moving in or moving out. The parties did do a walk through upon the Tenants moving out, but a report was not completed and the walk through ended early due to disagreements between the parties.

The Landlord seeks the following damages:

### **#1 Unkept Yard**

The Landlord argued that there was a verbal agreement with the Tenants that the Tenants maintain the yard. The Landlord argued the Tenants did not cut the grass and that it took the Landlord 10 hours to do the yard work after the Tenants vacated. The Landlord is seeking \$400.00 in compensation for their time. The Landlord provided a photo to support their claim.

Tenant LF argued they maintained the yard and that the Tenants are not responsible to meet the Landlord's preference on how the yard work is to be done.

### **#2 Broken Door**

The Landlord argued the wood had chipped off the bottom of one door. The Landlord advised they are not seeking the replacement of the door but \$100.00 to touch up the chipped piece. The Landlord provided a photo to support their claim.

Tenant LF argued the carpet was quite high and when they closed the door it caused wear and tear to the door.

### **#3 Broken Blinds**

The Landlord argued the blinds on the front door came off the track and they had to spend time removing and fixing the track and is claiming \$50.00 for their time. The Landlord provided a photo to support their claim.

Tenant LF argued they would have put the blind back on the track had the Landlord identified this needed to be fixed during the walk-through inspection.

### **#4 Urine Stains on Carpet**

The Landlord argued there were stains on the carpet which looked like pet urine stains. The Landlord provided photos to support their claim. The Landlord argued it took 2 hours of their time to clean the stains. Additionally, they spent \$20.00 on a cleaner. The Landlord is seeking \$95.00 in compensation.

Tenant LF argued the stain was from a spill and was regular wear and tear. Tenant LF also argued they hired a carpet cleaner and submitted a copy of the invoice into evidence.

### **#5 Deck Stain**

The Landlord argued there was bird poop that stained the vinyl deck because the Tenant's left bird seeds on the deck. The Landlord is seeking \$200.00 in compensation for their time and the cost of the pressure washer.

Tenant LF, argue they pressure washed and hosed the deck down before vacating the rental unit.

## **Analysis**

### **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 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.

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.

## **#2 Broken Door/#3 Broken Blind/ #5 Deck Stain**

Based on the photos submitted by the Landlord and the testimony of both parties I find the broken door, broken blind and deck stain to be reasonable wear and tear. As stated in Policy Guideline #1 reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. A tenant is not responsible for reasonable wear and tear. The Landlord argued the Tenants left bird seeds on the deck; however, no evidence was submitted to support this claim. I find that the bird poop is the result of natural forces and not the result of the Tenants deliberate damage. Additionally, given the blind is about 8 years old and given reasonable use a blind can come off its track. Given the size of the peeling on the laminate door and the fact that the door is around 8 years of age, I find this to be reasonable wear and tear.

As such, I decline to award the Landlord any compensation for these claims.

## **#1 Unkept Yard**

Policy Guideline #1 states that a tenant who lives in a single-family dwelling is generally responsible for routine yard maintenance, which includes cutting grass and cleaning snow. The photo provided by the Landlord does show that the grass was uncut before the Tenants vacated the rental unit. However, it is the Landlord's burden to prove how much work was required and how much it cost. The Landlord advised around 10 hours at \$40.00 an hour; however, the one photo provided does not support this estimate. I accept some yard work was required but in absence of any proof to the exact cost of the claim I find that the Landlord is entitled to a nominal amount of \$200.00.

## **#4 Urine Stains on Carpet**

Based on the photo of the stain and the submissions of both parties, I find that one stain is reasonable wear and tear given its size. However, the second photo shows a stain that is quite large, and I find to be beyond reasonable wear and tear and is a breach of section 37(2)(a) of the Act. As such I award the Landlord the \$95.00 for the carpet stain.

Therefore, 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 \$295.00.

**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 June 1, 2023, and the Landlord made their application on June 2, 2023, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a Landlord to claim against a security deposit for damage to the rental unit is extinguished if the Landlord does not complete the condition inspection report and give the Tenant a copy of it in accordance with the regulations. Given that the Landlord did not complete the move-in or move-out condition inspection report, as per sections 24 and 36 of the Act, I find that the Landlord extinguished their right to retain the security deposit

Pursuant to section 38(1) of the Act, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. However, the Landlord had extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24 and 36 of the Act and therefore the Landlord was required to claim against the security deposit for something other than damage or return the security deposit to the Tenants within the 15 days of the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing. The Landlord did not claim against the security deposit for something other than damage or return the security deposit to the Tenants and therefore breached section 38(1) of the Act.

Since the Landlord did not return the deposit within the time period required the deposit is doubled, pursuant to section 38(6) of the Act. I find that The Landlord must pay the Tenants double the amount of the security deposit, which is \$2,400.00. Pursuant to section 4 of the Regulations, the Tenants are also entitled to \$21.41, which is the interest accumulated on the security deposit.

The Landlord owes the Tenant \$2,421.41; however, the Landlord is awarded \$295.00 as compensation pursuant to section 67 of the Act. The amount owed to the Tenants will be set off against the amount the Tenants owes to the Landlord.

For the above reasons, the Landlord's application for authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed, without leave to reapply.

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

As the Landlord was partially successful in their application, I find that the Landlord is entitled to recover \$50.00 of the filing fee paid for this application under section 72 of the Act.

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

**Conclusion**

I grant the Tenants a Monetary Order in the amount of **\$2,176.41** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit and pet damage deposit under sections 38 and 67 of the Act	\$1,200.00
double of the security deposit under section 38(6) of the Act	\$1,200.00
interest accumulated pursuant to section 4 of the Regulation	\$21.41
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
deduct the Landlord's Monetary Order for damage under sections 32 and 67 of the Act	-\$295.00
deduce the Landlord's authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	-\$50.00
<b>Total Amount</b>	<b>\$2,176.41</b>

The Tenants are provided with a Monetary Order in the above terms 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.

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: November 30, 2023

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Residential Tenancy Branch