

## **DECISION**

### **Introduction**

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") 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
- 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 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 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

### **Preliminary Matters**

- Service of Landlord's Evidence

At the beginning of the hearing Tenant KR acknowledged receiving the Landlords' evidence package. During Landlord BB's submissions Tenant KR argued they did not receive the photo evidence the Landlord was referring to and only received a few pages. Landlord BB argued they served two packages on the Tenants containing the photo evidence and provided copies of the Canada Post tracking numbers. The tracking numbers show the packages were delivered around June 2023. Tenant KR argued they only received a small number of documents in the package; however, the photo of the packages provided by the Landlords shows a thick envelope.

I will note that the same evidence was submitted by the Landlords in a previous hearing between the parties (file numbers referenced on the cover page of this decision) and was acknowledged received by the Tenants in that previous hearing.

I find that Tenants to be sufficiently served with the Landlord's evidence pursuant to section 71(2) of the Act. As such, in making this decision, I have considered the Landlords' evidence.

## **Issues to be Decided**

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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 March 1, 2023, with a monthly rent of \$2,182.00, due on first day of the month, with a security deposit in the amount of \$2,150.00 and a pet damage deposit of \$900.00 and a key deposit of \$200.00. The parties agree this tenancy has ended but they disagree on the move out date.

The Tenants are seeking compensation as well as the return of their security deposit, pet damage deposit and key deposit. The Landlords filed a cross application seeking unpaid rent, compensation for damages and requested to retain the security and pet damage deposits.

## **Tenants' Claims**

Tenant KR argued they left their forwarding address inside the rental unit on April 30, 2023, and additionally provided another copy to the Landlords around May 25, 2023. Landlord BB argued they did not receive the forwarding address until sometime in late May 2023. I will note in one of the decisions from the previous hearings (noted on the

cover page) Landlord BB acknowledged receiving the forwarding address May 27, 2023.

The Tenants are seeking the return of their security and pet damage deposit. Also, Tenant KR also argued they paid a \$200.00 key deposit and upon returning the rental unit keys they did not receive their \$200.00 back from the Landlords.

The Tenants are seeking the following compensation:

1	Hydro Bill	\$1,229.58
2	Pest Problem	\$4,364.00
3	Quiet Enjoyment	\$17,456.00
4	Jacket Damage and Dry Cleaning	\$3,102.98
5	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$26,255.56</b>

Tenant KR argued that there was extensive construction on the residential property, which was being undertaken by the strata council and a construction company hired by the strata council, which impacted their living situation for about a year.

#### **#1 Hydro Bill \$1,229.58**

The Tenants are seeking compensation from the Landlords for the hydro that was used by the construction company doing the work for the strata council. Tenant KR pointed to a letter from the strata council, which was submitted into evidence, that stated "A significant cost saving for our project is the use of exterior electrical plugs for construction. The electricity use will be in your localized areas and reduces the cost of exterior electrical panels, safety and supply. Owner cooperation is greatly appreciated as it is a significant savings in cost and time" (the "Letter"). Tenant KR argued that the Letter required owners of units on the residential property to cover the cost of utilities if the contractors use their electrical outlets.

Landlord BB argued they are not responsible for the Tenants hydro bill and that the Letter does not state who is responsible for the electricity costs of the construction company.

#### **#2 Pest Problem \$4,364.00**

The Tenants are seeking two months of rental compensation due to a mice problem during the last two months of their tenancy. The Tenants submitted text messages with

the Landlords showing they advised the Landlords of the mice problem around March 2023. Tenant KR argued the Landlord took no steps to address the problem.

Landlord BB argued they hired a pest control company, but they were unable to do the work because the Tenants were uncooperative and did not respond to the pest control company's email. Landlord BB argued there was evidence submitted to support this. The evidence Landlord BB was referring to was provided for one of the previous hearings noted on the cover page.

### **#3 Quiet Enjoyment \$17,456.00**

The Tenants are seeking 8 months of rent due to their quiet enjoyment being impacted by the construction. Tenant KR argued they lived in an environment with constant banging and construction which impacted their lives.

Landlord BB argued the construction was undertaken by the strata council and they do not know what they could have done to fix the situation.

### **#4 Jacket Damage and Dry Cleaning \$3,102.98**

The Tenants are seeking compensation for dry cleaning and replacement of jackets that were damaged by the rodent issue and moths.

Landlord BB argued they are not liable and there is no proof to show what caused the damage.

## **Landlords' Claims**

### **Unpaid Rent**

The Landlords are seeking unpaid rent for the month of May 2023, as they argued the Tenants vacated mid May 2023 and did not pay any rent.

Tenant KR argued the tenancy ended April 30, 2023, and Landlord BB argued they vacated in May 2023 and that they found out the Tenants had vacated through a text message on May 13, 2023. Both parties submitted copies of text messages between them, which show a text message from May 8, 2023 where Tenant KR states "Just to let you know we have moved out..."

The Landlords sought the following damages:

Item	Description	Amount
1	Cracks and Small Holes	0.00
2	Flooring	0.00

3	Painting	0.00
4	Sink Cabinet	0.00
5	Installation of 2 lights	0.00
6	Broken Mirror	0.00
7	Sink Faucet	0.00
8	Door Panels	
	<b>TOTAL</b>	<b>\$2,860.00</b>

The parties advised a condition inspection move-in report was not done at the beginning of the tenancy. Landlord BB argued a move-out inspection report was completed May 30, 2023, and the Tenants declined to participate. Tenant KR argued they offered a time to do a move out inspection, but the Landlords did not accept.

The Landlords provided an invoice showing the total amount paid to address the damages but the invoice did not provide a breakdown for the individual work done and the Landlords were unable to provide a breakdown during the hearing. Additionally, photographic evidence of the damage was provided by the Landlords.

### **#1 Cracks and Small Holes**

The Landlords are seeking compensation for cracks, small holes and dry wall damage to the rental unit walls.

Tenant KR argued there was extensive construction undertaken by the strata council which caused a lot of damage to the walls and the strata council was going to cover the cost of fix it. Additionally, Tenant KR submitted photographic evidence to show they patched up the rental unit and painted before they vacated.

### **#2 Flooring**

The Landlords are seeking compensation for missing flooring and cracked flooring pieces. Landlord BB argued the flooring was replaced March 2021 before the Tenants moved in.

Tenant KR argued the flooring was coming out when they first moved in.

### **#3 Painting**

The Landlords argued due to the dry wall damage the entire rental unit had to be fixed and re-painted. Landlord BB advised the rental unit was painted March 2021 before the Tenants moved in.

Tenant KR submitted photographic evidence to show they patched up the rental unit and painted before they vacated.

#### **#4 Sink Cabinet**

Landlord BB argued the Tenants would not let the Landlords fix a problem with the sink which resulted in damage to the cabinet.

Tenant KR argued the sink cabinet was moldy since they moved in, and they filed a dispute to deal with this issue (previous hearing noted on cover page).

#### **#5 Installation of 2 Lights**

The Landlords argued two lights were missing.

Tenant KR argued no light fixtures were missing when the Tenants vacated.

#### **#6 Broken Mirror**

The Landlords are seeking compensation for a cracked mirror.

Tenant KR argued the construction undertaken by the strata council caused the crack in the mirror.

#### **#7 Sink Faucet**

The Landlords are seeking compensation for a broken faucet which they argued the Tenants would not allow them to fix.

Tenant KR argued there was never any issue with the sink faucet.

#### **#8 Door Panels**

The Landlords argued the door panels were kicked in and some were slit.

Tenant KR argued the doors were not in good condition when they moved in.

#### **Lost Rent due to Damage**

The Landlords are also seeking \$3,273.00 for loss of rent for June 2023 and half of July 2023, because they were unable to rent the rental unit due to the damages. Landlord BB argued they obtained a tenant for July 15, 2023. Additionally, Tenant BB advised they began repairs around early June 2023 and finished June 30, 2023.

Tenant KR argued the construction undertaken by the strata council caused a lot of damage to the rental unit which had to be fixed and had nothing to do with the Tenants.

## **Analysis**

### **Are the Tenants entitled to a Monetary Order 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 tenant 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 landlord 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 tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

### **#1 Hydro Bill/ #3 Quiet Enjoyment**

Based on the evidence and submissions of both parties, I find that the Landlord is not responsible for the hydro usage or impact on quiet enjoyment that was the result of the construction undertaken by the strata council. There is insufficient evidence to establish that the loss was the result of the Landlord's actions or neglect in violation of the act, regulation or tenancy agreement. Therefore, I decline to award any compensation.

The Tenants may want to seek assistance of the Civil Resolution Tribunal ("CRT") to resolve these issues with the strata council or the construction company. The CRT may be reached at 1-844-322-2292 or at their website at [Home » BC Civil Resolution Tribunal \(civilresolutionbc.ca\)](https://www.civilresolutionbc.ca).

### **#4 Jacket Damage and Dry Cleaning**

Based on the evidence and submissions of both parties. I find that the Tenants have provided insufficient evidence to establish that the damage to the jackets was caused by the pest problem or the actions of the Landlord. Therefore, I decline to award any compensation.

### **#2 Pest Problem**

Based on the text messages submitted by the Tenants, I find that the Tenants messaged the Landlords about the pest problem around March 2023.

Landlord BB argued they contacted a pest control company, but they could not get in contract with the Tenants.

Under section 32(1) of the Act, a landlord must maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the Landlords were in breach of their obligations under section 32(1) of the Act by not taking reasonable steps to investigate and address the rodent problem raised by the Tenants March 2023.

I accept the evidence of the Tenants that they took steps to mitigate their loss by informing the Landlords and I find the Landlords have submitted insufficient evidence to establish the Tenants were uncooperative with the pest control company. The Landlords relied on evidence submitted in a previous hearing showing the emails from the pest control company. However, the emails do not show who the recipient of the email was or that it was sent to a proper email for the Tenants. I find there is insufficient evidence to show the Landlord took any further steps to address the Tenants concerns.

However, I find that the Tenants have not provided sufficient evidence to establish why two months of rental compensation is required to compensate for the loss. As such, the Tenants have not established element 3 which is required to prove a loss.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As the Landlords breached sections 32 of the Act, I award the Tenants nominal damages in the amount of \$150.00.

### **Are the Landlords entitled to a Monetary Order for unpaid rent/and or utilities?**

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

The parties disagree over the date the tenancy ended. The Tenants argued it was April 30, 2023, and the Landlords argued it was May 13, 2023.

Section 45 of the Act outlines how a tenant can end a tenancy, which requires notice that meets the requirements of section 52 of the Act. I find that neither party has



provided evidence of a written notice given by the Tenants that meets the requirements of section 52 of the Act. As such, I and I award the Landlords \$2,182.00 for rent for May 2023.

**Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?**

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.

Based on the fact that no walk through or condition inspection report was completed at the beginning of the tenancy and due to the extensive construction undertaken by the strata council, I find there is insufficient evidence to establish what damage existed at the beginning of the tenancy and which damage may have been the result of the construction undertaken by the strata council.

As such, I decline to award any compensation for damages.

**Are the Landlords entitled to a Monetary Order for money owed or compensation for 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.

The Landlords sought compensation for loss of rent due to damages; however, as stated above there is insufficient evidence to establish whether the damage was the

result of the Tenants or the construction undertaken by the strata council, as such, I decline to award any compensation for loss of rent.

**Are the Landlords 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.

The parties disagree on the date that the forwarding address was received by the Landlord. Based on the submissions and evidence of the parties. I find that the forwarding address was provided in writing by the Tenants around May 25, 2023, and was received by the Landlords May 27, 2023. I find that this date was confirmed by the Landlords in a previous hearing and in this hearing Landlord BB advised they received the forwarding address later in May 2023. The Landlord made their application June 8, 2023, which is within the timeframe required.

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 they do 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 condition inspection report at the beginning of the tenancy, as per section 24 of the Act, I find that the Landlords 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 Tenant within the 15 days of the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing.

Since the Landlords 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 Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit, which is \$6,100.00. Pursuant to section 4 of the Regulations, the Tenants are also entitled to \$55.55, which is the interest accumulated on the security deposit since 2021

Under section 6 of the Regulations, a landlord is allowed to charge a refundable fee which is refundable upon return of the key. Based on the evidence and submissions of both parties, I find that the Landlords did not return the \$200.00 refundable key fee and

the Tenants are entitled to their \$200.00. Based on Policy Guideline #29, I find that the refundable key fee is not considered a security deposit and is not subject to the doubling provisions.

The Landlords owe the Tenant s\$6,355.55; however, the Landlords are awarded \$2,182.00 as compensation for unpaid rent. The amount owed to the Tenants will be set off against the amount the Tenants owes to the Landlords.

For the above reasons, the Landlords' application for 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 is dismissed, without leave to reapply.

### **Are the Landlords or the Tenants entitled to recover the filing fee for their application?**

As both parties were only partially successful, I decline to award either party recovery of their filing fee.

### **Conclusion**

I grant the Tenants a Monetary Order in the amount of **\$4,323.55** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$2,150.00
double of the security deposit under section 38(6) of the Act	\$2,150.00
a Monetary Order for the return of all or a portion of their pet damage deposit under sections 38 and 67 of the Act	\$900.00
double of the damage deposit under section 38(6) of the Act	\$900.00
interest accumulated pursuant to section 4 of the Regulation	\$55.55
recovery of their refundable key deposit under section 6 of the Regulation	\$200.00
Tenants' nominal monetary award	\$150.00
deduct the Landlord's Monetary Order for unpaid rent	-\$2,182.00
<b>Total Amount</b>	<b>\$4,323.55</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: December 6, 2023

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Residential Tenancy Branch