

DECISION

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$2,080.00 for damage to the rental property under section 67 of the Act;
- authorization to retain the security deposit under section 38 of the Act; and
- authorization to recover the Landlord's filing fee under section 72 of the Act.

The Tenants applied for:

- return of the security deposit in the amount of \$500.00 under section 38 of the Act; and
- authorization to recover the Tenants' filing fee under section 72 of the Act.

The Landlord and one of the Tenants, JDT, attended this hearing and gave affirmed testimony.

Preliminary Matters

Amendment of Style of Cause

These applications initially named different parties. During the hearing, the parties agreed that there were two Tenants, JDT and his girlfriend AW. JDT confirmed that he represented both Tenants. By consent of the parties and pursuant to section 64(3)(c) of the Act, I have unified the style of cause across both applications.

Service of Dispute Resolution Proceeding Packages and Evidence

JDT confirmed receipt of the Landlord's notice of dispute resolution proceeding package and evidence. The Landlord confirmed receipt of the Tenants' notice of dispute resolution proceeding package and evidence, except for the Tenants' video evidence.

JDT acknowledged that a copy of the Tenants' video was not served on the Landlord prior to this hearing. Under Rules 3.14 and 3.15 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), evidence that a party intends to rely on

must be received by the other party, in the case that the serving party is an applicant, not less than 14 days before the hearing, and in the case that the serving party is a respondent, not less than 7 days before the hearing.

Since the Tenants' video was not served on the Landlord in accordance with the Rules of Procedure, I have excluded this evidence for the purpose of this decision.

Issues to be Decided

Is the Landlord entitled to compensation for damage to the rental property?

Is the Landlord entitled to retain the security deposit?

Are the parties entitled to recover their filing fees?

Background and Evidence

I have reviewed all the accepted evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The rental unit is a basement suite in a house. This tenancy commenced on May 15, 2022 and ended on April 30, 2023. Rent was \$1,500.00 due on the first day of each month. The Tenants paid a security deposit of \$750.00 which is held by the Landlord.

According to the Landlord, the parties had signed a condition inspection report during a move-in inspection on May 15, 2022 as well as during a move-out inspection on April 30, 2023. The Landlord submitted a copy of this report into evidence.

JDT denied that he had signed any condition inspection report with the Landlord. JDT stated that the condition inspection report submitted by the Landlord was a false document.

The Landlord received the Tenants' forwarding address in writing on May 12, 2023 and submitted his application on May 26, 2023.

The Landlord seeks compensation as follows:

Item	Amount
Replace Baseboard, Material, Labour, and Paint	\$100.00
Clean Candle Wax on Bedroom Wall, Drywall Repair, and Paint	\$100.00
3 Walls in Living Room (Drywall and Paint)	\$575.00
3 Vinyl Planks Damaged (Remove and Install New Planks)	\$525.00
Living Room Ceiling Paint Touch-ups	\$300.00

Cleaning (8 hours × \$50.00 per hour)	\$400.00
Total	\$2,080.00

The Landlord gave the following testimony and evidence:

- The rental unit was brand new when the Tenants moved in. A condition inspection report was signed upon move-in and emailed to JDT. The Landlord submitted a copy of this email into evidence.
- During the move-out inspection, the Landlord identified the items to be fixed, which JDT did not want to do. JDT eventually signed off on the condition inspection report, and the Landlord emailed a copy to JDT. The Landlord submitted a copy of this email into evidence.
- The Landlord has provided pictures showing damage and unclean areas of the rental unit. The Landlord hired the builder of the house to repair the damage. The Landlord submitted a \$1,680.00 invoice dated May 1, 2023. The Landlord and his spouse also cleaned for 4 hours per person, totalling 8 hours at \$50.00 per hour. The Tenants did not apply for the return of their security deposit in full, which is an admission of their guilt.
- The condition inspection report was signed by the Landlord and JDT at both the move-in and move-out inspections. The Landlord also filled out the section for the Tenants to authorize a full deduction of \$750.00 security deposit, which JDT signed in the Landlord's presence. The Landlord shook AW's mother's hand in the driveway when she was outside. The Landlord completed the condition inspection report with JDT only, and neither AW nor AW's mother had witnessed the signing.

JDT gave the following testimony on behalf of the Tenants:

- The Tenants cleaned the place to the best of their ability. The Landlord requested the rental unit to be in the condition when the Tenants moved in, which seems impossible.
- The Landlord came downstairs while the Tenants and AW's mother were cleaning and moving things out. The Landlord shook AW's mother's hand and agreed that if all appliances were working, the Tenants would receive their deposit back in full. All the Landlord had said that was wrong was that the toilet was a bit dirty, which the Tenants wiped down. A few weeks later, the Landlord told the Tenants that he would be keeping the entire security deposit.
- The Tenants are unsure how the Landlord is claiming damages of over \$2,000.00. There were two small chunks taken out of the baseboard, the Tenants had spiled a candle on the wall which left a stain, and the Tenants had left their LED light strips on the walls. The Landlord had said that he will keep the LED light strips up and see what the new tenants say. The Landlord seemed to be fine with the LED light strips, but ripped them off after the Tenants moved out.
- The Tenants do not agree that things like the baseboard, the candle stain, and the aluminum underneath stove adds up to over \$2,000.00. The amount claimed by the Landlord is higher than what it should be and way more than actual costs.

At first the Landlord said that he had hired a cleaner, but now the Landlord says it was him and his spouse who did the cleaning.

- The Tenants did not sign any condition inspection reports. The email that the Landlord claims he sent the reports to is a randomly generated email from which the Landlord received JDT's e-transfers. The Landlord intentionally used the wrong email address so JDT would not receive the emails.
- JDT had only signed the tenancy agreement. The Landlord, the Landlord's spouse, AW, and AW's mother were present. JDT is unsure, but the Landlord may have emailed a copy of the tenancy agreement to the Tenant.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the Landlord entitled to compensation for damage to the rental property?

Under section 37(2)(a) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under Section 32(3) of the Act, 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.

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I will address the items claimed by the Landlord as follows: (a) baseboard, (b) cleaning and candle wax, (c) living room walls, (d) vinyl planks, and (e) ceiling paint touch-ups.

a. Baseboard

I find there was a chunk of the baseboard missing and portion of the baseboard had started to separate from the wall. I am satisfied that this was damage beyond reasonable wear and tear, which was caused by the actions or neglect of the Tenants or a person permitted on the property by the Tenants. I find the amount claimed by the Landlord for the replacement of this baseboard to be reasonable.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$100.00 for the baseboard damage.

b. Cleaning and Candle Wax

I find the bottom of the stove was dirty with crumbs and the stove elements were dirty with grease. I find other areas such as the kitchen cabinets, kitchen countertop, bathroom sink, bathtub, toilet, heater cover, and dryer were not as dirty but nevertheless required further cleaning to be considered reasonably clean. I do not find the pictures to show any garbage or items left behind by the Tenants.

I find the bedroom wall had some candle wax stains. However, I find the Landlord has not provided sufficient evidence to prove that these stains could not have been removed through cleaning, and that drywall or paint repairs were needed.

I note the Landlord requested the Tenants to return the rental unit in the same condition that it was given to them. However, this is not the standard that a tenant is required to meet under section 37(2)(a) of the Act. Under this section, a tenant is required to leave a rental unit reasonably clean, which is less than perfectly clean or thoroughly clean. Therefore, while I accept the Landlord and his spouse spent four hours to deep clean the rental unit, I find this was more than necessary to bring the rental unit to a standard of reasonable cleanliness.

Based on the pictures submitted by the Landlord, and considering the size of the rental unit, I find the Landlord is entitled to compensation for 4 hours of cleaning at \$50.00 per hour to bring the rental unit up to a standard of reasonable cleanliness.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$200.00 for cleaning.

c. Living Room Walls

I find the Tenants had put up LED light strips around the walls in the living room, which took paint off the walls when they were removed.

According to Residential Tenancy Branch Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, the tenant must pay for repairing walls where

there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

In this case, I am satisfied that the LED lights caused damage beyond reasonable wear and tear, for which the Tenants are responsible.

However, as stated in Residential Tenancy Branch Policy Guideline 40. Useful Life of Building Elements ("PG 40"), if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

According to PG 40, interior paint has an estimated useful life of 4 years. I find the interior paint in the living room had approximately 3/4 of its useful life left at the time that this tenancy ended. Therefore, I find the Landlord is entitled to compensation of \$525.00 \times 3/4 years = \$393.75 for painting the living room walls.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$393.75 for the living room walls.

d. Vinyl Planks

I find there is a relatively small dot of red ink-like stain on one of the vinyl floor planks. I also find there is a light blue stain near the connecting point of two other vinyl planks. I do not find these stains to be sufficiently serious to warrant the replacement of these three planks. Nevertheless, considering that the red and blue colours are visually different from the light wooden-coloured vinyl, I accept that there has been cosmetic damage that is beyond reasonable wear and tear. I find the Landlord is entitled to nominal damages of \$100.00 for this loss. As explained in PG 16, "nominal damages", which are a minimal award, 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.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlord nominal damages of \$100.00 for the stains on the vinyl planks.

e. Ceiling Paint Touch-ups

I find the Landlord has not submitted sufficient evidence in support of this claim. I do not find the pictures submitted by the Landlord to show any ceiling damage. I find the Landlord has not explained how the Tenants or someone permitted onto the property might have damaged the ceiling through their actions or neglect. As such, I dismiss the Landlord's claim under this part without leave to re-apply.

Is the Landlord entitled to retain the security deposit?

Pursuant to sections 24, 36, and 39 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security deposits at the end of a tenancy.

Under section 23 of the Act, the landlord and tenant must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The landlord must offer the tenant at least two opportunities for inspection. The landlord must also complete a condition inspection report and give the tenant a copy of that report in accordance with the regulations.

Under sections 24(2) and 36(2) of the Act, the right of a landlord to claim against a security deposit or pet damage deposit for damage to the rental property is extinguished if the landlord:

- a. does not provide the tenant with at least two opportunities for inspection
- b. having provided the tenant with opportunities for inspection, does not participate on either occasion, or
- c. does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations

I find the Landlord did not complete an inspection report with the Tenants at the start or end of the tenancy and did not give the Tenants a copy of any such report.

I find the Landlord's emails dated May 15, 2022 and May 1, 2023, through which the Landlord allegedly emailed JDT copies of signed condition inspection reports upon move-in and move-out, are false documents which have been doctored.

I find it to be manifestly clear that these emails have been doctored because:

- I find the May 15, 2022 email contains a date and timestamp of "Mon, May 15, 2022 at 5:36 PM". However, May 15, 2022 was a Sunday.
- I find the Landlord's email address in the header of the May 1, 2023 email is different from the Landlord's email address in the sender section of that same email. This "mistake" is also present in the Landlord's email dated April 5, 2023, which I similarly find to be a false document.
- I find there are further discrepancies between these three emails and an Interac e-transfer email dated April 1, 2023, which I accept to be genuine.

Considering the brazen manner in which I find three of the Landlord's emails to have been doctored, I am not satisfied that JDT had signed the condition inspection report at the start and end of the tenancy as alleged by the Landlord.

Furthermore, I find this condition inspection report suggests that JDT had agreed with the Landlord's description of all damages and authorized the deduction of the security deposit in full, which I find to be unlikely.

Based on the screenshots submitted by the Tenants, I find the Landlord sent JDT text messages describing a list of damages and informing JDT that the Landlord "will not be returning your damage deposit" after the Tenants had vacated. I find these messages also mention the Landlord's new tenant had "moved in" and told the Landlord "she was very disappointed at the state" of the rental unit. I find it is unlikely that the Landlord would have sent messages about not returning the security deposit if JDT had already agreed in writing for the Landlord to keep the deposit. Therefore, I accept JDT's testimony that he did not sign any condition inspection report and that his signatures on the Landlord's report are forgeries.

For the reasons given above, I am satisfied that the parties did not complete condition inspection reports as required, and the Landlord's right to claim against the security deposit for damage to the rental property was extinguished under section 24(2)(c) of the Act.

As explained in Residential Tenancy Policy Guideline 17. Security Deposits and Set Off ("PG 17"), extinguishment means that the Landlord may only apply to claim against the security deposit or obtain the Tenants' consent to deduct from the deposit for a claim other than damage to the rental property. The Landlord may still file a monetary claim against the Tenants for damage to the rental property after returning the security deposit.

Under section 38(1) of the Act, a landlord must (a) repay a security or pet damage deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of the tenancy end date, or the date the landlord receives the tenant's forwarding address in writing.

I find the Landlord received the Tenants' forwarding address in writing on May 12, 2023 and submitted his application within 15 days. However, I find the Landlord's claim against the security deposit, as stated in the Landlord's application, was only for damage to the rental property, even though the Landlord had already extinguished his right to this claim.

I find the Landlord did not make another type of claim against the security deposit (e.g. unpaid rent) or return the security deposit to the Tenants within 15 days after May 12, 2023. Therefore, I find the Landlord did not comply with section 38(1) of the Act.

Section 38(6)(b) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

According to PG 17, an arbitrator will order the return of a security deposit (doubled or otherwise) or any balance remaining to the tenant on applications for the retention or return of a deposit, unless the tenant's right to the deposit has been extinguished.

In this case, I find the Tenants' right to the return of the security deposit was not extinguished. I find the Tenants were not given two opportunities for a move-in or move-out inspection by the Landlords in accordance with the Act and regulations, which the Tenants then failed to attend. I also find the Tenants gave the Landlord a forwarding address in writing within one year of the tenancy end date.

Therefore, I find the compensation awarded to the Landlord in this decision must be offset against double the security deposit held by the Landlord, with the balance to be returned to the Tenants.

Are the parties entitled to recover their filing fees?

The Landlord has been partially successful in his claims for damage, while the Tenants are being granted the return of a portion of their security deposit. Accordingly, I find both parties are entitled to recovery of their filing fees under section 72(1) of the Act, and I setoff the filing fees awarded against each other.

Conclusion

The Landlords' claims for compensation and recovery of the filing fee are partially granted in the amount of **\$893.75**. The remaining amounts sought by the Landlord are dismissed without leave to re-apply.

The Tenants are entitled to return of double the security deposit and the recovery of their filing fee, less the total awarded to the Landlord in this decision.

Pursuant to section 62(3) of the Act, I grant the Tenants a Monetary Order of **\$706.25**, calculated as follows:

Item	Amount
Amount Payable by Landlord to Tenants	
Double the Security Deposit (Pursuant to section 38(6) of the Act) (\$750.00 × 2)	\$1,500.00
Tenants' Filing Fee	\$100.00
Subtotal	\$1,600.00
Less Amounts Payable by Tenants to Landlord	
Replace Baseboard	- \$100.00
Cleaning (4 hours × \$50.00 per hour)	- \$200.00

3 Walls Drywall and Paint (3/4 Years Useful Life Remaining for Paint) (\$525.00 × 3/4 years)	- \$393.75
Nominal Damages for Stained Vinyl Planks	- \$100.00
Landlord's Filing Fee	- \$100.00
Subtotal	- \$893.75
Balance to be Returned by Landlord to Tenants	\$706.25

This Order must be served on the Landlord as soon as possible. This Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: January 11, 2024

Residential Tenancy Branch