

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

Tenant D.G. attended the hearing for the Tenant.

A.F. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As the Tenant acknowledged service of the Landlord's Notice of Dispute Resolution Proceeding Package and did not raise any concerns regarding service, I find the Tenant was 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 award requested?

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

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 July 1, 2021, with a monthly rent of \$2,131.00, due on first day of the month, with a security deposit in the amount of \$1,050.00. A move in inspection and report had completed by the parties on June 28, 2021.

On February 16, 2023, late in the evening, the Tenant residing in the unit below DG contacted the property manager notifying them that their bathroom ceiling was wet. The property manager hired a plumber to investigate the issue. The plumber attended the residence and concluded that water must be leaking from the upstairs unit.

DG was subsequently contacted by the property manager at approximately midnight, who notified her that a plumber would be attending her unit to investigate the possibility of a water leak.

The plumber which indicated on his invoice that when he attended DG's unit, he found that her basin sink was plugged and overflowing to the floor. He poured chemicals to clean the drain which he determined to have been plugged by here and a dental floss.

The plumber invoiced the strata corporation \$803.25 for three hours of labour and supplies. The strata corporation then invoiced the Landlord who said that it was her understanding from conversations with property management that the plumber charged a minimum of three hours for attending to unit after hours, and double his typical rate, and that this was a standard practice in the industry. The Landlord then sought to recover payment from the Tenant.

The repair company also invoiced the strata corporation \$1,039.50 for their investigation and repair of the ceiling in the unit below DG. This consisted of treatments to the water stain and painting of the entire ceiling. The strata corporation then invoiced the Landlord. The Landlord then sought to recover payment from the Tenant.

The Tenant disputed the charges, insisting that there was no water leaking and that when the plumber turned on the tap the water was going down the drain slowly, but it was otherwise normal. The said that the plumber's account was a lie. Accordingly, the

Tenant said that she should not be held responsible the cost of the plumber's investigation, or any repairs performed with respect to the ceiling below.

The Landlord attempted to dispute the charges on behalf of the Tenant, but the strata corporation upheld the charges via its decision letter dated May 1, 2023.

The Landlord applied for compensation from the Tenant on June 6, 2023, and served the Tenant with a Notice of dispute resolution hearing by registered mail on June 16, 2023.

A move out inspection and report was completed on August 28, 2023. The Tenant vacated the property and the tenancy ended on August 31, 2023.

The Tenant did not sign the move out inspection report that was completed as she did not agree with the items indicated. The Tenant said that she cleaned everything, including the fridge and cabinets. She also rented a carpet cleaner to clean the carpet.

The Landlord said that the unit was not cleaned when the Tenant vacated and provided a number of photos in support. The Landlord hired a cleaner to clean the unit and was charged \$378.00 which consisted of \$280.00 worth of cleaning and \$80.00 for steam cleaning plus taxes.

The Landlord said that there were holes in the wall that required repair, that the bathtub would not drain, and burned-out lightbulbs when the Tenant vacated and provided a number of photos in support. The Landlord hired a handyman to repair these items and was charged \$336.00.

On September 26, 2023 the Landlord received notice of the Tenant's change of address via registered mail.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

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

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.

Water Leak

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for damage to the rental unit or common areas.

I find that the damage, specifically the water leak, occurred. In reaching this conclusion I find the information provided by the plumber, that the Tenant's water basin was plugged and overflowed, to be especially compelling. I find that it is more likely than not that the plumber was honest in his account.

I also find that it is more likely than not that the Tenant, as occupant of the unit, was responsible for the sink becoming plugged.

I find that the Landlord has proven the actual amount required to compensate for the claimed loss or to repair the damage. Specifically, I accept as accurate the plumber's invoice of \$803.25 and the repair company invoice of \$1,039.50 for their investigation and repair of the ceiling below.

I find that in light of the property manager's quick response to the leak, the Landlord took reasonable steps to mitigate or minimize the loss or damage being claimed. I further note that the Landlord disputed the charges on the Tenant's behalf.

Cleaning

The Tenant claimed that she cleaned everything, including the fridge and the cupboards. I find that the pictures provided by the Landlord show that while the unit appears to have been adequately emptied, it does not appear to have been cleaned, with the sinks, shower, and toilet all appearing to be quite dirty. I also note that a number of drawers and cupboards look as though they have not been cleaned, nor does the oven or a fridge which both had items left inside. The balcony does not appear to have been cleaned either and is quite dirty. I further find the Tenant's credibility to have been diminished as a result.

Residential Tenancy Branch Policy Guideline #1 states that the Tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the Tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. While the carpets do not appear to be particularly damaged or discolored, I am unable to discern whether they had been steam-cleaned. Although the Tenant claimed to have steam cleaned the

carpet prior to vacating the unit, I do find this claim to be credible in light of her failure to perform basic cleaning with respect to the items identified in the previous paragraph.

Residential Tenancy Branch Policy Guideline #1 states the Tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The Tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

I find that at the end of the tenancy, the property was left in a condition that does not comply with that standard. I find that the Landlord has proven the actual amount required to compensate for the claimed loss or to repair the damage. Specifically, I accept as accurate the cleaner's invoice of \$378.00.

Repairs

The Landlord said that there were holes in the wall that required repair, that the bathtub would not drain, and burned-out lightbulbs when the Tenant vacated and provided a number of photos in support. The Landlord hired a handyman to repair these items and was charged \$336.00. These pictures show that hair was removed from the tub drain, a burnt-out lightbulb was replaced, and that a hole in the wall was patched and painted.

Residential Tenancy Branch Policy Guideline #1 states the Tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the Tenant.

I find that the repairs performed by the handyman were necessary, and the result of the actions or neglect of the Tenant. I find that the Landlord has proven the actual amount required to compensate for the claimed loss or to repair the damage. Specifically, I accept as accurate the handyman's invoice of \$336.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

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 \$2,556.75.

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

I have determined that this aspect of the Landlord's claim is essentially a restatement of their previous claim for a Monetary Order for damage to the rental unit or common areas. As I have already determined the Landlord's claim for unpaid, I find this claim to be redundant. For this reason, the Landlord's application for 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 is dismissed, without leave to reapply.

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(1) 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 Landlord applied for compensation from the Tenant on June 6, 2023, and served the Tenant with a Notice of dispute resolution hearing by registered mail on June 16, 2023. The Tenant vacated the property and the tenancy ended on August 31, 2023. On September 26, 2023, the Landlord received notice of the Tenant's change of address via registered mail. I find that the Landlord made their application prior to the tenancy ending and the forwarding address being provided.

Section 38(4) of the Act states that a Landlord may retain an amount from a security deposit if after the end of the tenancy, the director orders that the Landlord may retain the amount. The right of a Landlord to retain all or part of a security deposit or pet damage deposit under subsection 38(4) (a) does not apply if the liability of the Tenant is in relation to damage and the Landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [Landlord failure to meet start of tenancy condition report requirements] or 36 (2) [Landlord failure to meet end of tenancy condition report requirements].

It is not disputed that a move in inspection and report was completed by the parties on June 28, 2021. Although the Tenant did not sign the move out inspection report because she disagreed with it, I find that a move out inspection was performed and a report was completed on August 28, 2023.

The Landlord held a total \$1,050.00 in trust for the Tenant representing her security deposit.

Under section 72 of the Act, I allow the Landlord to retain \$1,050.00 in satisfaction of the monetary award from the Tenant's security deposit.

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

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

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$1,606.75** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for for damage to the rental unit or common areas rent under section 67 of the Act	\$2,556.75
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	-\$1,050.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$1,606.75

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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: January 4, 2024

Residential Tenancy Branch