

DECISION

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") 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
- 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 Tenant's 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
- An order requiring the Landlord to return the Tenant's personal property under section 65 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlords were served on September 1, 2023, by registered mail in accordance with section 89(1) of the Act and deemed served on the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that the Tenant was served on August 26, 2023, by registered mail in accordance with section 89(1) of the Act and deemed served on the fifth day after the registered mailing. The Landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenant in accordance with section 88 of the Act. The Tenant advised they were unable to view the original evidence delivered on a USB in August 2023 and received paper copies from the Landlords on January 12, 2024. The Landlord's agent SA (The Landlord's Agent") argued they were not informed until January 2023 that the evidence was not viewable by the Tenant and provided hard copies right away. The Tenant advised they were ready to proceed with the hearing. As such, I have considered the evidence of the Landlords in this Decision.

Preliminary Matters

- Pest control

The Landlord's Agent advised the Landlord was no longer seeking the \$490.00 for the pest control company. As such, I withdraw this portion of the Landlords' monetary claim.

Issues to be Decided

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 Tenant's security and/or pet damage deposit in partial satisfaction of the monetary award requested?

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

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

Is the Tenant entitled to the return of their personal property?

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

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 April 29, 2022, with a monthly rent of \$2,100.00, due on first day of the month, with a security deposit in the amount of \$1,050.00 and pet damage deposit of \$1,050.00. This tenancy ended June August 8, 2023.

The Landlords filed an application claiming damages and requesting to retain the security and pet damage deposits. The Tenant filed a cross-application for compensation for loss of quiet enjoyment and the return of their personal property.

Security and Pet Damage Deposit

The Landlord's Agent argued on April 29, 2022, the Landlords did a walkthrough of the rental unit with the Tenant and told the Tenant they would provide a copy of the

condition inspection report later. The Landlord's Agent argued that move-in condition inspection report was provided to the Tenant via email on April 30, 2022.

The Tenant argued they did not complete the move-in report with the Landlords, and they never received the move-in report. The Tenant argued the Landlords showed the Tenant the rental unit and asked, "Do you like it?", but no walk through was completed.

The Landlord's Agent argued the Tenant refused to participate in the move-out walk through on August 8, 2023, but that they completed it themselves and provided a copy via email which was not delivered. The Landlord's Agent argued they then provide a copy of the move-out condition inspection report with the evidence on August 26, 2023.

The Tenant argued on August 8, 2023, they asked the Landlord's Agent to conduct the move-out inspection at a different time as they were still in the process of moving out, but this request was denied.

The Tenant advised they provided their forwarding address via text message on August 8, 2023, and the Landlord's Agent confirmed receiving it.

Landlords' Damages Claim

The Landlords sought the following damages:

Item	Description	Amount
1	Paint Restoration	\$1,500.00
2	Electrical Repair	\$800.00
3	Plumbing/Toilet	\$600.00
4	Door Repairs	\$200.00
5	Yard Restoration	\$1,200.00
6	Taxes on items above	\$215.00
	TOTAL	\$4,515.00

#1 Paint Restoration

The Landlords position is that the Tenant did extensive damage to the walls with chipping, cracks and paint coming off. Additionally, the Landlord's Agent argued the Tenant painted some of the walls a different colours without the Landlords' consent. Receipts and photographs were submitted into evidence. The Landlord's Agent advised they are not sure when it was last painted as the Landlord acquired the rental unit right before it was rented to the Tenant in April 2022.

The Tenant's position is that the Landlords' photos are not dated and that the damage to the walls was there prior to the occupying the rental unit. Additionally, the Tenant argued they did not paint the walls and they were already painted multiple colours when they moved into the rental unit. The Tenant provided photos of the rental unit from June 4, 2022, which shows some damage to the walls. I will note that the Tenant provided some of those photos in back and white.

#2 Electrical Repair

The Landlord's Agent argued the oven and dishwasher were not working at the end of the tenancy and believes it may have been caused by rats chewing through the wires. Receipts were submitted into evidence

The Tenant argued they informed the Landlords about the rat problem and the Landlords and Landlord's Agent did nothing about it.

#3 Plumbing/Toilet

The Landlord's Agent argued the toilet was broken and needed to be replaced. The Landlord's Agent described the damage as a cracked seat, cracked lid and damage inside the toilet. Receipts and photographs were submitted into evidence.

The Tenant argued the toilet seat was damaged when they moved in and provided a photograph from June 4, 2022. The Tenant advised they did crack the top of the toilet and found a quote online for around \$130.00. Additionally, the Tenant argued a new toilet was not needed to fix the damage.

#4 Door Repair

The Landlord's Agent argued all the doors needed to be painted in the rental unit due to cracks. The Landlord's Agent also argued the front door had several black marks that would not come off and the bedroom door had pet scratches. Receipts and photographs were submitted into evidence

The Tenant argued the front door was already damaged when they moved in and provided a photograph of the door from June 4, 2022.

#4 Yard Restoration

The Landlord's Agent argued there were several holes all over the yard because of the Tenant's dogs digging and fence damage due to the tenant building a fence without the Landlords' permission. Receipts and photographs were submitted into evidence.

The Tenant argued when they moved in the Landlords advised of some damage to the back yard fence that would be fixed, but never was. Additionally, the Tenant argued they put some screws and extra boards that could be easily taken off. The Tenant also

argued they bought dirt to fill the holes, but the Landlord's agent would not let them return to fix it on the move-out day.

Tenant's Compensation Claim

The Tenant is seeking \$1,050.00 for loss of quiet enjoyment and \$125.00 for damage to personal property. The Tenant argued they advised the Landlords around May 27, 2023, of a rat problem in the rental unit that the Tenant believed it was caused by the next-door neighbour. The Tenant argued the Landlords and Landlord's Agent did nothing to address the rat problem. Text messages between the Tenant and Landlord's Agent were submitted into evidence. The Tenants position is that the rat presence impacted their ability to sleep and was causing electricity problems in the rental unit as they believe the rats were chewing the wires in the rental unit. The Tenant is also seeking the \$125.00 for a deep fryer and baking sheet that had to be thrown away due to the rat problem in the rental unit.

The Landlord's Agent argued they attempted multiple times to have a pest control company come assess the problem but every time the Tenant had a scheduling conflict. Additionally, they argued they were in communication with the landlord from the property next door trying to assess the rat problem. The Landlord's Agent also argued when the pest control company came to assess the rental unit on July 26, 2023, they informed the Landlord's Agent that they believe the rat problem was caused by the Tenant. No evidence was provided to support this claim. The Tenant also disputed this claim and argued the pest control company agreed the problem was caused by the next-door neighbour. Furthermore, the Landlord's Agent advised after the Tenant vacated the rental unit, they only ever found one rat and the new tenants have not had any issues. Text messages between the Landlord's Agent and the Tenant were provided as evidence.

Return of Personal Property

The Tenant argued the following items were left behind after they vacated the rental unit and the Landlord's Agent would not let them return to collect these items:

1. 2 Security Door Cameras \$330.00
2. Show Cable Box \$138.00
3. Computer Chair \$75.00
4. Paper Shredder \$60.00
5. A/C Unit \$200.00
6. Large Mirror \$100.00
7. Garbage and Recycle Cans \$20.00

The Tenant provided receipts to show comparable prices to replace the items listed above.

The Landlord's Agent advised that the A/C unit and 2 security cameras are still at the rental unit. The Landlord's Agent advised they did put the large mirror on the porch, and they are not aware of what happened to it. The Landlord's Agent argued they never saw a Shaw cable box, computer chair, paper shredder or the garbage and recycle cans after the Tenant vacated the rental unit.

Analysis

Are the Landlords 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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

#1 Paint Restoration

Based on the evidence and submissions of both parties I find that the damage to the rental unit walls is beyond reasonable wear and tear, given the number of scratches, marks and discolouration. I find this breaches section 36 of the Act and the Landlords suffered a loss. The Tenant argued the damage was done prior to them occupying the rental unit. The Tenant provided photographs from June 2022 showing some marks on the wall; however, I find that these photos were not clear enough to determine the extent of the damage and they were taken 1 month into the tenancy. As such, I find I cannot determine that all the damage to the walls was done prior to the Tenant occupying the rental unit.

Given that the move-in condition inspection report was not completed with the Tenant and the Tenant was unable to note any existing damage to the walls, I decline to award the full \$1,500.00 being sought by the Landlords. Additionally, I have taken into consideration that the useful life of paint is 4 years, as stated in Policy Guideline 40 and the Landlord's Agent was unable to provide the date the rental unit was last painted. Based on the above, I award the Landlords \$900.00 as this takes into consideration the factors I have listed above.

#3 Plumbing/Toilet

Based on the submissions of both parties and evidence, I find that the Tenant agreed they caused same damage to the top of the toilet. As such I find that the Tenant is responsible for the Landlords' loss.

The Tenant argued that the toilet seat damage was there prior to the Tenant occupying the rental unit and provided a photograph from June 2022. However, I find that this photo was not clear enough to determine the extent of the damage to the toilet seat and it was taken 1 month into the tenancy. As such, I find I cannot determine that the damage to the toilet seat was done prior to the Tenant occupying the rental unit.

Given that the move-in condition inspection report was not completed with the Tenant and the Tenant was unable to note any existing damages, I decline to award the full \$600.00 being sought by the Landlords. I award the Landlords \$400.00 as I find this accounts for the factors listed above.

#4 Door Repair

Based on the evidence and submissions of both parties I find that the damage to the rental unit doors is beyond reasonable wear and tear, given the number of marks and discolouration. I find this breaches section 36 of the Act and the Landlords suffered a loss.

The Tenant argued the damage to the entry door was there before they occupied the rental unit and provided a photograph from June 2022. However, the photo provided by the Tenant does not show nearly the number of marks and discolouration as the photo provided by the Landlords at the end of the tenancy and the photo was taken 1 month into the tenancy. As such, I decline to find that all damage to the front door was pre-existing.

Given that the move-in condition inspection report was not completed with the Tenant and the Tenant was unable to note any issues with the doors, I decline to award the full \$200.00 being sought by the Landlords. Based on the above, I award the Landlords \$150.00 as this accounts for the factor listed above.

#4 Yard Restoration

As stated in Policy Guideline 1, a tenant must obtain consent of the landlord prior to erecting fixtures, including a fence and if the tenant leaves a fixture on the property that the landlord did not agree the tenant could erect and the landlord wants the fixture removed, the tenant is responsible for the cost of removal. Additionally, Policy Guideline 1 provides that a tenant in a multi-family dwelling with exclusive yard use is responsible for yard maintenance.

Based on the submissions and evidence of both parties, I find that the Tenant erected a fixture without the consent of the Landlords and is responsible for the cost of removal. Additionally, I find that the Tenant was responsible for yard maintenance including filling any holes prior to vacating the rental unit. However, I find that the Landlords only partially mitigated their loss for the holes in the yard as they did not allow the Tenant to fill the holes with the dirt they had bought. The Landlord's Agent argued it was not sufficient to fill the holes with just dirt; however, no evidence was provided to show that this would not have fixed the damage. Based on the above I award the Landlords \$900.00 for the yard restoration as this takes into account the partial mitigation.

#2 Electrical Repair

As stated in Policy Guideline 1, a tenant is generally required to pay for repairs and damages that are caused either deliberately or as result of neglect, by the tenant or their guests. I find that there is insufficient evidence to establish that the Tenant caused the damage to the electrical for the oven and dishwasher. As such, I decline to award the \$800.00 being sought by the Landlords.

#5 Taxes on Items Above

I will note the Landlords provided an invoice from a contractor for all the repairs listed above and the taxes were included on the end total price. As such, I find I am unable to determine what the taxes were for each item listed above and what portion the Tenant is required to pay.

Is the Tenant 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. To be awarded compensation for a breach of the Act, the tenant must prove the following 4 elements:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Policy Guideline #6 explains that a breach of quiet enjoyment is substantial interference with the ordinary and lawful enjoyment of the premises and temporary discomfort, or inconvenience does not constitute a basis for a breach of the entitlement of quiet enjoyment. When determining the amount by which the value of the tenancy has been reduced Policy Guideline #6 advises that an arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment and the length of time over which the situation existed.

Based on the review of the evidence and submissions of the parties, and applying the 4-part test described above, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find that the Tenant has provided insufficient evidence to support the value of their loss. While photos were provided showing rat droppings and a hole in the ceiling, I find that this is insufficient to establish the value of their loss. Additionally, no evidence was provided to substantiate that the loss of electricity was caused by a rat problem. As such, I decline to award the \$1,050.00 sought by the Tenant.

Baking Sheet and Deep Fryer

No evidence was provided to support that these items needed to be thrown out or that they were damaged. As such, I find that the Tenant has provided insufficient evidence to establish they suffered a loss and I decline to award the \$125.00 sought by the Tenant.

Accordingly, I order that the Tenant's application be dismissed without leave to reapply.

Are the Landlords Obligated to Return the Tenant's personal Property?

Section 65(1)(e) of the Act provides that, in instances where a landlord has not complied with the legislation or tenancy agreement, an arbitrator may order that personal property seized or received by a landlord must be returned.

The Landlord's Agent stated that the A/C unit and 2 security cameras remains at the rental unit. I order the Landlords must make good efforts to work with the Tenant so they can retrieve the A/C unit and 2 security cameras left at the rental unit. Email addressed are on the cover sheet of this decision which will allow the parties to plan for this final pick up. As the Landlord's Agent advised they put the mirror on the porch and is not aware of what happened to it, I award the Tenant \$100.00 for the recovery of the mirror.

For the remaining items, I find there is insufficient evidence to establish that those items have been seized or received by the Landlords. As such, I dismiss the request for an order for return of the follow personal property; Shaw cable box, computer chair, paper shredder and garbage and recycle cans.

Are the Landlords entitled to retain all or a portion of the Tenants security and pet damage 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.

A tenant is required to provide their written forwarding address to the landlord.

In this matter, the Tenant advised they provided their forwarding address via text message to the Landlords, which is not considered “in writing” and is not a permitted method of service as set out under section 88 of the Act. As such, I find that the Tenant has not provided their forwarding address in writing to the Landlords. Since the forwarding address was never provided in writing and the Landlords made their application on August 22, 2023, I find that the Landlord did make their application within 15-day deadline.

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, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the Tenant was not provided with two opportunities to complete the inspection upon move-out as required under section 35(2) of the Act. As such, under section 36(2), I find that the Landlords have extinguished their right to claim against the security and pet damage deposit.

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.

Section C1 of Policy Guideline #17 states, “the arbitrator will order the return of a security deposit, or any balance remaining on the deposit on a landlord’s application to retain all or part of the security deposit...whether or not the tenant has applied for dispute resolution for its return.” However, I also find that the Tenant did not provide their forwarding address in writing and is not entitled to double the security and pet damage deposits.

I award the Tenant their security and pet damage deposits, plus any interest pursuant to section 4 of the Regulation. The Tenants are entitled to \$2,100.00 for their security and pet damages deposits plus interest. However, as I have awarded both parties compensation, I will offset the amounts against each other

Is Either Party Entitled to the Return of their Filing Fee?

As both parties were partially successful, I offset the filings fees against each other and neither party is entitled to any amount.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$55.13** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenant for the return of their security deposit plus interest from the landlord	\$1,072.43
a Monetary Order for the Tenants for the return of their pet damage deposit plus interest from the landlord	\$1,072.44
a Monetary Order for the Tenants for monetary loss under section 67 of the Act for the return of their personal property	\$100.00
Total amount awarded to the Tenants	\$2,244.87
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act to the Landlord	-\$2,350.00
Total amount awarded to the Landlords after offset against the amounts owed to the Tenant	\$105.13

The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 24, 2024

Residential Tenancy Branch