

DECISION

Introduction

This hearing dealt with the parties' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Landlords applied for:

- compensation of \$1,425.00 for damage to the rental unit under 67 of the Act;
- compensation of \$400.00 for monetary loss or money owed under section 67 of the Act;
- authorization to retain the security and/or pet damage deposit of \$1,425.00 under section 38 of the Act; and
- authorization to recover the Landlords' filing fee from the Tenants under section 72 of the Act.

The Tenants applied for:

- return of the security and/or pet damage deposit of \$1,350.00 under section 38 of the Act; and
- authorization to recover the Tenants' filing fee from the Landlords under section 72 of the Act.

The Landlords and the Tenants attended this hearing and gave affirmed testimony. The Tenants called a witness, LM, who also gave affirmed testimony.

The parties confirmed receipt of each other's documents for dispute resolution.

Preliminary Matter: Tenants' Other Claims

The Tenants' application raises issues (e.g. breach of tenancy agreement and compensation for emotional damage) which are not related to the Tenants' claim for the return of the security and/or pet damage deposit. Since the Tenants have not specifically included another claim to cover those issues, I do not address them in this decision.

Issues to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?

Are the Landlords entitled to compensation for monetary loss or money owed?

Are the Landlords entitled to retain the security and pet damage deposits?

Are the parties entitled to recover their filing fees?

Background and Evidence

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

The rental unit is a lower suite in a house. The Landlords reside in the main suite. This tenancy commenced on January 1, 2023 and ended on August 31, 2023. Rent was \$1,900.00 due on the first day of the month. The Tenants paid a security deposit of \$950.00 and a pet damage deposit of \$475.00.

The parties attended move-in and move-out condition inspections and completed the condition inspection report on each occasion. The Tenants provided the Landlords with their forwarding address on the report on August 31, 2023. The Landlords submitted their application on September 19, 2023.

The Landlords seek compensation as follows:

Item	Amount
Paint Material Costs and Labour	\$200.00
Flooring Estimate	\$490.00 - \$700.00
Cleaning Cat Spray and Walls for Painting (6 hours × \$30.00 per hour)	\$180.00
Broken Window	\$447.34
Lost Rent (September 1 to 6, 2023)	\$400.00

The Landlords gave the following testimony and evidence:

- The rental unit was a brand-new suite and the Tenants were the first to live in it. When the Tenants moved out, there was damage caused by the Tenants' cats and a broken window.
- The cat damage included cat stains on doors, cat scratches on the walls, and messes on the walls from cat litter boxes. There was also cat odour in the rental unit. The Landlords purchased primer for use on the doors due to cat spray. The Landlords also purchased paint and painted the walls themselves. The Landlords spent 6 hours cleaning the walls to remove cat spray and odour. The Tenants left some cleaner which did not work. It took a few rounds of cleaning, airing out, and

an enzyme cleaner purchased by the Landlords to clean the walls, especially where the litter box was kept.

- The worst areas for cat odour were underneath the floors near the two doors. The cat urine and spray seeped underneath the floor and caused damage. The floors were popped up and wiped, but there is still a lingering smell. The cost to repair the damaged planks can vary, and it is expected that three or four boxes of replacement planks will be needed. One of the Landlords has a construction company and can do the work himself. The vinyl flooring was finished and is waterproof, just a little trim piece was not there.
- The Landlords discovered the broken window the day after the move-out inspection. The blinds were lowered during the inspection so the crack at the top of the window was missed. The crack could have been caused by anything. The Landlords did hear lots of crashing and banging from the rental unit during the tenancy.
- The Tenants gave notice on August 1, 2023 to move out by August 31, 2023, which was late. The Landlords were able to find new tenants for September 1, 2023. However, the new tenants were unable to move in until September 7, 2023 due to the cat odour and damage in the rental unit. The Landlords received \$1,500.00 out of the monthly rent of \$2,000.00 due to the delay. The Landlords seek compensation for lost rent from September 1 to 6, 2023.

The Tenants gave the following testimony and evidence:

- The Tenants gave 30 days' notice to move out, so the Tenants did not think that the loss of rent was cause for the Tenants to pay.
- After the initial move-out inspection, the Landlords told the Tenants to get more supplies and clean again. The rental unit was spotless other than the smell and odour. The Tenants spent a lot of time and money cleaning the unit.
- The Tenants patched and sanded the cat scratches on the wall. The Tenants offered to paint if the Landlords had extra paint, but the Landlords did not respond to the Tenants' text messages.
- The floor was not finished near the doors, and both were missing trims. This resulted in stuff getting underneath. There was moisture in the winter months and cats will have a smell. The Tenants do not think that they should be responsible for damage underneath the floor when it was unfinished.
- The Tenants did not notice the broken window during the move-out inspection. To the Tenants' knowledge, they never saw that window broken until they received the Landlords' email. The window did not look broken and it was a surprise to the Tenants. Even if it had happened earlier, the Tenants did not see it as they had blinds down the whole time.

The Tenants' witness LM testified that he stayed over in the rental unit. LM testified that he had heard yelling from the Landlords' suite. LM denied that there was odour from cat urine in the rental unit. LM explained that he had experience living on a farm, which was way worse.

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.

Are the Landlords entitled to compensation for damage to the rental unit?

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.

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 Landlords as follows: (a) cleaning, (b) painting due to cat scratches and spray, (c) damaged flooring, and (d) broken window.

a. Cleaning

I find the parties agreed on the signed condition inspection report that there was cat spray throughout the unit and cat odour. Based on this report and the photos submitted by the Landlords, I find the rental unit was not left reasonably clean at the end of the tenancy due to cat odour and cat spray on the walls and doors. I find the Landlords' claim for 6 hours of cleaning at \$30.00 per hour to be reasonable in the circumstances.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords \$180.00 for cleaning.

b. Painting Due to Cat Scratches and Spray

I find the walls were scratched by the Tenants' cats and the door stained with cat spray, which amounted to damage beyond reasonable wear and tear. I find the Tenants made efforts to repair the damage by patching up the scratches. However, I find the Tenants are liable to fully repair the damages which also includes painting. I find this to be appropriate given that the unit had been brand new and the tenancy was for less than one year.

The Landlords have submitted evidence of their costs to purchase primer and paint of $\$24.97 + \$21.57 + \$52.63 = \99.17 . Considering this cost and the Landlords' labour, I find the \$200.00 claimed by the Landlords for painting and materials to be reasonable. Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords \$200.00 for painting.

c. Damaged Flooring

I find the flooring near the doors was damaged by cat urine and spray seeping into the planks. While I accept that the flooring may be less prone to damage if the doors had trims, I find the damage was nevertheless caused by the Tenants' pets and was beyond reasonable wear and tear. I accept that one of the Landlords can do the repair work himself. I find the Landlords have provided a range for the repair estimate but have not identified any factors to justify that the costs would be on the higher end. Therefore, I find the Landlords are entitled to \$490.00 for the flooring repairs.

d. Broken Window

I find the Landlords' photos show a crack near the top part of the window, which cannot be seen if the blinds are partially lowered. I find the Landlords have not provided sufficient evidence to explain how the window came to be broken. I do not find the crack to appear to have been caused by a person or an object striking the window from inside the rental unit. I find the Landlords have not proven that more likely than not, the crack was caused by the actions or neglect of the Tenants, their guests, or their pets, instead of another cause such as material defect or external forces. I dismiss the Landlords' claim under this part without leave to re-apply.

Are the Landlords entitled to compensation for monetary loss or money owed?

I find the Tenants did not give the Landlords a clear month's notice to end the tenancy as required under section 45(1) of the Act.

Additionally, I have found above that the Tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy.

As stated in Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent, if a tenant does not leave the rental unit reasonably clean and undamaged except for reasonable wear and tear when vacating, and the premises are unrentable because of this, then in addition to compensation for damage to property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

Based on the text messages submitted by the Landlords, I accept the Landlords had found a new tenant for September 1, 2023. I accept the Landlords' evidence that the new tenant agreed to rent the unit for \$2,000.00 a month, and was unable to move in until September 7, 2023 due to the cat odour and repairs. I find the Landlords mitigated their losses by completing the cleaning and repairs within a reasonable time.

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords $\$2,000.00 \times 6/30 \text{ days} = \400.00 for loss of rent from September 1 to 6, 2023.

Are the Landlords entitled to retain the security and pet damage deposits?

Pursuant to sections 24, 36, and 39 of the Act, landlords and tenants can extinguish their rights in relation to the security or pet damage deposit if they do not comply with the Act and the regulations.

I find the parties attended move-in and move-out inspections and completed the condition inspection report on both occasions. I find the Tenants gave the Landlords a forwarding address in writing within one year after the tenancy end date. Therefore, I find neither party extinguished their rights to the security and pet damage deposits.

Under section 38(1) of the Act, a landlord must (a) repay a security or pet damage deposit to the tenant 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,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find the Landlords received the Tenants' forwarding address in writing on August 31, 2023, the tenancy end date. I find that under section 38(1) of the Act, the Landlords were required to return the deposits to the Tenants or make an application by Friday, September 15, 2023. I find the Landlords paid the filing fee and submitted their application on Tuesday, September 19, 2023. I find the Landlords did not comply with the time limit required under section 38(1) of the Act.

Section 38(6) 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 and pet damage deposits.

Based on the foregoing, I find the Landlords are deemed to be holding double the security and pet damage deposits in trust for the Tenants, or $2 \times (\$950.00 + \$475.00) = \$2,850.00$.

I have found that the Landlords are entitled to compensation equal to less than the total deposits deemed to be held by the Landlords. Therefore, I conclude that the Tenants are entitled to the return of the balance.

Are the parties entitled to recover their filing fees?

The Tenants have been successful in their claim for the return of the deposits while the Landlords have been partially successful in seeking compensation. I find both parties are entitled to recover their filing fees under section 72(1) of the Act.

Conclusion

The Landlords' claims for compensation and recovery of the filing fee are partially granted in the amount of **\$1,370.00**. The remainder sought by the Landlords is dismissed without leave to re-apply.

The Tenants are entitled to return of double the security and pet damage deposits and recovery of their filing fee, less the total awarded to the Landlords in this decision.

Pursuant to section 62(3) of the Act, I grant the Tenants a Monetary Order of **\$1,580.00**, calculated as follows:

Item	Amount
Amount Payable by Landlords to Tenants	
Double the Security and Pet Damage Deposits ($2 \times (\$950.00 + \$475.00)$)	\$2,850.00
Tenants' Filing Fee	\$100.00
Subtotal	\$2,950.00
Less Amounts Payable by Tenants to Landlords	
Cleaning	- \$180.00
Painting due to Cat Scratches and Spray	- \$200.00
Flooring Repair	- \$490.00
Loss of Rent due to Cleaning and Repairs	- \$400.00

(\$2,000.00 × 6/30 days)	
Landlords' Filing Fee	- \$100.00
Subtotal	- \$1,370.00
Balance to be Returned by Landlords to Tenants	\$1,580.00

The Tenants must serve this Order on the Landlords 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: March 12, 2024

Residential Tenancy Branch