

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
- 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

And the Tenant's cross-application under the Act for:

- return of the Tenant's security deposit under section 38 of the Act
- authorization to recover their filing fee under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (proceeding Package)

Neither party disputed service.

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 retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to the return of their deposit?

Is either party entitled to recover their filing fee?

Facts and Analysis

The tenancy began on August 16, 2018, with a monthly rent at the end of the tenancy of \$2,333.00, due on first day of the month, with a security deposit in the amount of \$1,100.00. Interest of \$28.53 has accumulated on the deposit to the date of the hearing. The Landlord holds the deposit in trust pending the outcome of the hearing.

The parties agree they completed a move in inspection at the start of the tenancy. Neither party raised an issue with how the move-in inspection was completed.

The parties agree October 31, 2023, was the last day of the tenancy. The parties completed a move-out inspection on October 29, 2023, and the Tenant provided their forwarding address to the Landlord in writing on that date.

The Landlord applied to retain the security deposit on November 14, 2023, for the following claims:

- balcony cleaning, \$204.75
- replacing baseboard heater, \$114.24
- estimate to replace laminate flooring in living room, \$3,892.82
- replacing ceramic stovetop, \$605.90

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

Section 32(3) of the Act says 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 37 of the Act says a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

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

The Landlord claims the following damages:

Description	Amount Claimed	Amount Awarded	Reasons for decision
Moss removal from balcony	\$204.75	0%	The Landlord admits that it is difficult to clean the moss and algae from the balcony given the character of the balcony and the rough

			decking material. I find the deep cleaning of the balcony is maintenance of the property that goes beyond regular cleaning. I find the balcony was reasonably clean at the end of the tenancy, in compliance with section 37.
Baseboard heater Replacement	\$114.24	0%	The parties agree the strata replaced windows during the tenancy, which impacted the area where the baseboard was located. The Tenant says they placed a desk in front of that baseboard heater and did not notice whether it was working because there was another functioning heater in the room. I am not convinced the Tenant damaged the baseboard heater, when the damage could have been caused by the contractors who replaced the window above it.
Living room flooring	\$3,892.82	\$300.00	The laminate in the living room was 5 years old at the end of the tenancy. The Tenant admits that they scratched the flooring while moving in furniture 5 years ago. I find the damage to the flooring is cosmetic and does not impact the flooring's function or safety. I award the Landlord \$300.00 for depreciated value.
Ceramic stovetop	\$605.90	0%	Based on the photographs from both parties I find the scratches on the ceramic stovetop consistent with wear and tear. The Landlord has not convinced me that it was necessary to replace the stovetop or that the stovetop could not be repaired. I find the Landlord failed to mitigate their losses.

Under section 67 of the Act, I award the Landlord \$300.00 for damage to the living room flooring. I dismiss the remainder of the Landlord's claims, 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 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.

I find the Landlord complied with their requirements under the Act to complete inspections of the rental unit. I find the Landlord applied to retain the deposit within 15 days of the agreed end of the tenancy.

Even if I found the tenancy ended on the move out inspection date of October 29, 2023, I still find the Landlord applied within 15 days as calculated under the Rules of Procedure. If the time for filing an application falls on a holiday or designated closure of the RTB office, the time is extended to the next day that the office is open. Since the RTB office was closed on November 13, 2023, 15 days after October 29, 2023, the time to file would be extended to November 14, 2024, which is when the Landlord made their application.

Under section 72 of the Act, I find the Landlord is entitled to retain \$300.00 from the security deposit in satisfaction of their claim for damage to the laminate flooring. I order the balance of the deposit plus interest, \$828.53 must be returned to the Tenant.

Is either party entitled to recover their filing fee?

Since each party was partly successful in their claim, they are each entitled to their filing fee. Those amounts will offset each other under section 72 of the Act. As a result, no award is required.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$828.53** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenant for the return of their deposit plus interest	\$1,128.53
Amount awarded to the Tenant for filing fee under section 72 of the Act	\$100.00
Amount awarded to the Landlord for damage to the rental unit under section 67 of the Act	-\$300.00
Amount awarded to the Landlord for filing fee under section 72 of the Act	-\$100.00
Total Amount	\$828.53

The Tenant is provided with this Order on 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, it Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the Landlord's application for compensation under section 67 of the Act is dismissed, without leave to reapply.

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 27, 2024

Residential Tenancy Branch