

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

This hearing also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- A Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- A Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlords were served on October 13, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenants provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that the Tenants were served on November 29, 2023, by registered mail in accordance with section 89(1) of the Act, 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 Tenants' evidence was served to the Landlords in accordance with section 88 of the Act.

Based on the submissions before me, I find that some of the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act. The Tenants advised they received no evidence from the Landlords regarding the Tenants' 12-month compensation claim. Landlord ADS argued they were not aware this needed to be provided to the Tenants and only uploaded it to the RTB website. Per Rule of Procedure 3.17, I am excluding the Landlords' evidence related to the 12-month compensation claim from consideration as the Tenants never received it. The Landlord was advised they could provide oral testimony about what the evidence would have been.

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 Tenants' security deposit in partial satisfaction of the monetary award requested?

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

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Are the Tenants entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

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 February 26, 2022, with a monthly rent of \$2,244.00, due on first day of the month, with a security deposit in the amount of \$1,100.00 paid February 23, 2022.

The tenancy ended August 29, 2022, after the Tenants were served with the Two Month Notice for Landlord's Use. The Two Month Notice indicated that the child of the landlord or landlord's spouse intended to occupy the rental unit and the effective date was September 30, 2023 (the Two Month Notice).

The Tenants have applied for return of the security deposit and for compensation because they believe the Landlords have not complied with the Act or used the rental unit for the stated purpose on the Two Month Notice. The Tenants' application was filed October 10, 2023.

Return of the Security Deposit

The parties advised a move-in condition inspection report was completed February 26, 2022. Landlord ADS argued they provided the Tenants with a copy of the move-in condition inspection via text message on March 16, 2022. The Landlord advised they provided a copy of the text message into evidence. The Tenants' position is they never received a copy of the move-in condition inspection report. Landlord ADS argued they were unable to complete the move-out condition inspection report because the Tenants were argumentative and so the move-out condition inspection report was never completed or provided to the Tenants. The Tenants' position is that they disagreed with the comments of the Landlords during the walk-through but advised them to complete the report. The parties agreed the Tenants provided their forwarding address August 9, 2023 via registered mail.

12 Month Compensation

Landlord ADS argued their son moved into the rental unit September 20, 2023 and is currently residing at the rental unit. Landlord ADS argued they have a tenancy agreement, strata form, BC Hydro bills all in their son's name which supports their son is occupying the rental unit. Landlord ADS also argued their son was accepted to BCIT and the acceptance letter states the rental address. Copies of these documents were not served on the Tenants.

The Tenants' position is that the Landlords served the Two Month Notice because they wanted to sell the rental unit and it would be easier to sell and renovate without Tenants living in the rental unit. The Tenants advised the Landlords originally contacted the Tenants because they wanted to sell the rental unit and asked to arrange showings and repairs and 42 hours after the Tenants asked to arrange a different schedule the Landlords advised the Tenants that they no longer wished to sell, and their son would

be moving into the rental unit. Text messages between the parties were provided to support the Tenants' timeline. The Tenants provided listings of the rental unit for sale and argued they don't believe the Landlord's son ever moved in. The Tenants argued the rental ads show new appliances and an empty rental unit. Landlord ADS agreed they listed the rental unit for sale but argued it has not been sold and the their son is living in the rental unit.

The Landlords filed a cross application seeking damages and authorization to retain the security deposit. The Landlords' application was filed November 22, 2023.

Damages

The Landlords are seeking the following damages:

Item	Description	Amount
1	Stove	\$1,176.97
2	Microwave	\$626.00
3	Taxes on Stove and Microwave	\$216.36
4	Cleaning	\$480.00
5	Repairs	\$600.00
	TOTAL	\$23,702.70

#1 Stove/ #2/ #3 Taxes on Stove and Microwave

The Landlords' position is that the stove and microwave worked but the stovetop had food and debris baked on and the microwave door was burned. Landlord ADS argued they tried cleaning the stovetop and microwave, but the residue and burn mark would not come off. Landlord ADS advised the stove and microwave were around 13 years old. Photographic evidence and copies of the receipts were provided.

The Tenants position is that the Landlords wanted to upgrade the appliances since they are trying to sell the rental unit and the appliances were outdated. The Tenants argue the appliances had some markings and scratched but this is because they were around 15 years old. The Tenants argued the stovetop could have been replaced but the Landlords choose to upgrade the entire stove to a Samsung. Additionally, the Tenants provided photographic evidence that show the Landlords tried selling the appliances on

Facebook and stated in the advertisement “all appliances are perfectly working just being old”.

#4 Cleaning

The Landlords position was that the rental unit was not left clean and Landlord ADS had to spend 12 hours cleaning the rental unit. Landlord ADS performed the cleaning and provided an invoice that listed what was cleaned, that it took 12 hours, and the cost was \$40/ per hour. Photographic evidence was provided.

The Tenants advised they provided videos of the condition of the rental unit upon moving out which show the rental unit was left reasonably cleaned. The Tenants position is that the Landlords wanted to sell the rental unit and needed a different level of cleaning to have the rental unit presentable for showings.

#5 Repairs

The Landlords provided a repair invoice which stated, “payment for painting, re-caulking bathroom, fixing of doors”. Landlord ADS advised the walls and ceiling needed to be touched up and the rental unit was last painted 4 years ago. Landlord ADS argued they provided a photograph which showed some staining on the ceiling. Landlord ADS advised the bathroom was not cleaned and had to be re-caulked and this was last done 4 years ago. Landlord ADS also argued the front door would not close properly.

The Tenants’ position is that the move-in condition inspection report indicated there were scratches and chips on the rental unit walls upon the Tenants moving in. Additionally, the Tenants argued they provided a video which shows the door can be opened and closed properly. Furthermore, the Tenants argued the Landlord wanted to change the door, so it was more attractive to buyers. The Tenants argued the bathroom was 15 years old and they left the bathroom clean as showed in the video evidence submitted.

Are the Tenants entitled to a Monetary Order for compensation for the Landlords failing to accomplish the stated purpose on a notice to end tenancy?

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a Landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration.

A landlord serving a two-month notice for landlord's use and listing a property for sale but not selling the property is allowed under the Act. However, the landlord is still required to achieve the stated purpose while the property is listed for sale.

I accept that Tenants' testimony, that the rental unit was not occupied but rather it was renovated and listed for sale. I do not accept that the Landlords made the decision to sell after the Tenants vacated, rather, I find it more likely that it was the Landlords' intention to have a vacant rental unit which would make it easier to sell and improve the property. For example, the rental ads provided by the Tenants stated, "fresh paint all over & brand new stainless steel kitchen appliances: new gas stove, hood range microwave, fridge and dishwasher". The text message evidence and listings, also confirms the Landlords originally planned to sell the rental unit around July 11, 2023, and that after some disagreement over the schedule to show the rental unit the Landlords decided to serve the Two Month Notice and have their son moved in, then the property was listed for sale September 28, 2023. This timeline does not support that the Landlords had a change of mind after they served the Two Month Notice.

I find the Landlords have provided insufficient evidence to establish they accomplished the stated purpose on the Two Month Notice. I find that the oral submissions alone regarding the BC Hydro bills, a tenancy agreement and strata form all in the name of the Landlord's son are insufficient to establish the Landlords' accomplished the stated purpose on the Two Month Notice.

Therefore, I find the Tenants are entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on the Two Month Notice under section 51 of the Act, in the amount of \$26,928.00.

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 Stove/ #2/ #3 Taxes on Stove and Microwave

According to Policy Guideline 40, the useful life of a microwave is 10 years. I will note Landlord ADS advised the microwave was 13 years old. I find the microwave was past its useful life expectancy and given the evidence that the microwave was still in working condition I decline to award any compensation for the microwave.

The photographic evidence supports that there were scratches and residue on the stovetop. I find this breached section 32 of the Act and the Landlords suffered a loss. According to Policy Guideline 40, the useful life of a stove is 15 years. I will note Landlord ADS advised the stove was 13 years old. Additionally, the video evidence of the Tenants supports that the stovetop was still in working condition. Given the stovetop was near the end of its useful life and since it was still in working condition, I award the Landlord nominal damages of \$150.00.

#4 Cleaning

I find that the invoice prepared by Landlord ADS for their time cleaning and the photographic evidence does not support that 12 hour of cleaning was required. Additionally, the video evidence provided by the Tenants does not support the 12 hours of cleaning being claimed by Landlords ADS. Furthermore, the invoice does not provide a breakdown of how much time was spent on each task and just outlines the total time. Based on the above, I decline to award the Landlords the compensation for personal time cleaning.

#5 Repairs

I find that no photographic evidence was provided to substantiate that the bathroom needed re-caulking or that the front door was damaged. The video evidence provided by the Tenants showed the front door opening and closing without issue. Furthermore, the move-in condition inspection report indicated the walls had marks and scrapes prior to the Tenants moving in. A photograph was provided to show that the ceiling had some discolouration; however, I find that the invoice did not distinguish how much each repair costed or what was painted. I find I am unable to confirm if the repair invoice covered repainting the ceiling discolouration.

Therefore, I find the Landlords are 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 \$150.00.

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit or 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(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, 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, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit.

I find that Tenants provided their forwarding address via registered mail August 9, 2023 and based on the Canada Post tracking number it was received August 11, 2023. The Tenants vacated the rental unit August 29, 2023. The Landlords filed their application claiming against the security deposit, November 22, 2023. Based on the above, the Landlords did not file their application or return the security deposit within 15 days of the Tenants vacating the rental unit. Pursuant to section 38(6)(a), I find that the Landlord did not comply with section 38(1) and file their application within the 15-day deadline and is not allowed to make a claim against the security deposit. For the above reasons, the Landlord's 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.

I find that the Tenants did not extinguish their rights to retain the security deposit as they participated in the move-in condition inspection report and participated in the move-out condition inspection report until the Landlords decided to not proceed with the rest of the move-out inspection.

Under section 38(6) of the Act, I find that the Landlords must pay the Tenants double the security deposit as they have not complied with section 38(1) of the Act.

Since the Landlords did not file their application within the time required the deposit is doubled, pursuant to section 38(6) of the Act. I find that The Landlords must pay the Tenants double the amount of the security deposit, which is \$2,200.00. Pursuant to section 4 of the Regulations, the Tenants are also entitled to \$26.73, which is the interest accumulated on the security deposit since 2022.

Therefore, I find the Tenants are entitled to a Monetary Order under sections 38 and 67 of the Act, in the amount of \$2,226.73. Pursuant to section 72 of the Act, I will offset any amount owed to the Landlords from the amount owed to the Tenants.

Are the Landlords or Tenants entitled to recover the filing fee for this application from the Other?

As the Landlords were only partially successful in their application, I find the Landlords are entitled to recover \$50.00 of the filing fee paid for this application under section 65 of the Act.

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 65 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$\$29,054.73** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act to the Tenants	\$1,100.00
Double of the security and/or pet damage deposit under section 38(6) of the Act	\$1,100.00
Interest accumulated pursuant to section 4 of the regulation	\$26.73
a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 or 51.4 of the Act to the Tenants	\$26,928.00

authorization to recover the filing fee for this application from the landlord under section 72 of the Act for the Tenants	\$100.00
a Monetary Order for the Landlord for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$150.00
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	-\$50.00
Total Amount	\$29,054.73

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: March 5, 2024

Residential Tenancy Branch