



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

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

The Landlord's application for:

- A monetary order of \$8,760.00 for damage to rental unit and compensation for loss under 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

The hearing dealt with the Tenant's Application for Dispute Resolution under the Act for:

- A monetary order of \$2,274.00 for compensation or loss under the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord JT attended the hearing.

Tenant IT attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

## **Preliminary Matters**

The Landlord testified that they would like to withdraw their claim for a monetary order of \$50.00 for a door stopper. As such, the claim for this item is dismissed without leave to reapply.

The Tenant testified that they are seeking a monetary order of \$2,174.00, not \$2,274.00 as noted incorrectly on their application for dispute resolution. I amend the Tenant's application and accept their claim for the lower amount of \$2,174.00, the monthly rent at the end of the tenancy.

The parties indicated their intention to settle their dispute.

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute.

Both parties agreed to the following terms of a final and binding resolution of the Landlord's application and the issues in dispute arising out of this tenancy at this time and that they did so of their own free volition and without any element of coercion:

1. The Tenant agrees to compensate the Landlord the sum of \$112.00 for the broken glass, sundeck end table.
2. The Tenant agrees to compensate the Landlord the sum of \$35.00 for the broken butter dish.
3. These particulars comprise the full settlement of two of the items listed in the Landlord's current application for a monetary order for damage to rental unit and compensation for loss under the Act.

In order to give effect to the above settlement reached between the parties, I grant a Monetary Order in the Landlord's favour in the amount of 147.00.

The Landlord is also seeking a monetary order for damage to rental unit and compensation for loss under the Act for additional items.

## **Issue(s) to be Decided**

- Is the Landlord entitled to a monetary order for damage to rental unit and compensation for loss under the Act?
- Is the Landlord entitled 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 the Tenant entitled to a monetary order for compensation or loss under the Act?
- Is the Tenant entitled to recover the filing fee for this application from the Landlord under section 72 of the Act?

## **Background and Evidence**

Both parties agreed to the following details of the tenancy:

- This tenancy started on April 1, 2021 and ended on September 5, 2023
- At the end of the tenancy the monthly rent was \$2,174.00
- The Tenant paid a security deposit of \$1,050.00, which the Landlord continues to hold in trust
- The move out inspection was completed on April 2, 2021
- The move out inspection, Condition Inspection Report (CIR) was completed on September 5, 2023
- The Tenant did not provide their forwarding address in writing to the Landlord

The Landlord stated that the move out inspection occurred later in the day on September 5, 2023, when it was dark, and that the Tenant agreed for the Landlord to continue with and complete the inspection during daylight hours. The Tenant testified that they did not provide such permission, and that the Landlord added items and comments to the CIR after the move out inspection was completed. The Tenant testified that the Landlord did not bring additional items to their attention.

The Landlord is seeking a monetary order for damage to rental unit and compensation for loss under the Act as follows:

Item 1 - \$4500.00, for sundeck replacement. The Landlord stated that there are several burn marks on the sundeck that cannot be patched and, therefore, the entire deck needs to be rerolled. The Landlord testified that the work is yet to be completed and that they obtained a quote of \$4,987.50. The Landlord submitted photographs of the damage and the estimate as part of their documentary evidence.

The Tenant admitted that their son placed on the sundeck and pan of smoking bacon, which resulted in one burn mark as noted on the CIR. The Tenant testified that the other stains and burn marks were not mentioned by the Landlord during the move out inspection and are not on the CIR. The Tenant stated that the Landlord only provided them with a photograph of one burn mark on the sundeck. The Tenant stated that the

decision to upgrade or replace the sundeck is that of the Strata Corporation, and this is not within the jurisdiction of the unit holder.

Item 2 - \$3000.00, for painting costs. The Landlord clarified that although their original claim for painting costs is for \$3000.00, they have reduced their claim to \$1,942.50. The rental unit was built in 2012 and was last painted in January 2020. The Landlord stated that there are large nail holes, gouges and scratches to the walls and doors in the rental unit, to include the hallway, bathroom, laundry room, living room and the main door. The Landlord stated that the damage is extensive and the walls and doors need to be patched and painted. The Landlord testified that the work is yet to be completed. The Landlord submitted photographs of the damaged walls and doors, and an estimate as part of their documentary evidence.

The Tenant testified that the damage to the walls and doors was not extensive, but reasonable wear and tear that occurred during the tenancy. The Tenant stated that the CIR notes pre-existing holes in the various walls of the rental unit. The Tenant admitted that they hung up items and there were scratches resulting from their daughter wearing rings, but these were not beyond normal wear and tear.

Item 3 - \$250.00, for a chipped countertop. The Landlord submitted photographs of the kitchen island countertop as part of their documentary evidence. The Landlord testified that there are two chips that are beyond normal wear and tear. The Landlord stated that they received a quote of \$675.00 as the existing laminate needs to be removed and replaced. The Landlord testified that the work is yet to be completed.

The Tenant testified that the chipped countertop was not brought to their attention during the move out inspection.

Item 4 - \$350.00, for a scratched glass stove top. The Landlord is yet to replace the glass and did not provide a quote for this item. The Tenant testified that this item was noted by the Landlord and added to the CIR, after the move out inspection. The Tenant stated the damage is normal wear and tear for a stove top from 2012.

Item 5 - \$200.00, for a new interior door. The Landlord is seeking to replace an interior door, the bathroom door of the rental unit. The Landlord stated that the bathroom door is beyond repair, and requires more than patching and painting. The Landlord submitted a photograph of the bathroom door. The Landlord testified that the door is yet to be replaced.

The Tenant admitted that the door to the laundry room had scratches, which can be repaired with patching and paint. The Tenant stated they accept responsibility for the scratches and find them to be part of normal wear and tear during this tenancy.

Item 6 - \$125.00, for a new full length mirror. The Landlord stated that the rental unit included a mirror at the start of the tenancy, and it was missing at the end of the tenancy. The Landlord stated that they purchased a new mirror and they submitted a receipt in the amount of \$123.17.

The Tenant stated that there was a mirror in the rental unit, located in one of the bedrooms. The Tenant stated that they did not break or remove the mirror that was mounted to the wall. The Tenant stated that the Landlord added the missing mirror to the CIR after the fact, and not when they participated in a walk through for the move out inspection.

Item 7 - \$100, for repair of the kitchen sink faucet. The Landlord stated that the faucet was functional at the start of the tenancy and it was not functioning properly at the end of the tenancy. The Landlord stated that the faucet plate pivots and their handyman stated that they may need to replace the plate or faucet. The Landlord testified that the faucet is yet to be repaired or replaced.

The Tenant testified that the base plate was loose, which resulted in the faucet mount being loose. The Tenant stated that they would regularly tighten the bottom nut, which was loose at the end of the tenancy and they informed the Landlord of this issue. The Tenant stated that they tightened that nut two times during the tenancy.

The Tenant stated that the tenancy ended by way of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice). The Tenant submitted the Two Month Notice in evidence. The Two Month Notice is dated August 14, 2023, with the effective date of October 31, 2023.

The Tenant testified that on August 26, 2023, they gave to the Landlord their tenant's notice to end the tenancy (Tenant Notice), and that they vacated the rental unit on September 5, 2023. The Tenant stated that they should receive a prorated amount of rent back based on the Tenant Notice.

The Tenant stated that they paid full rent for August 2023 and the Landlord stated they would waive the rent due on September 1, 2023. The Tenant referred to email communication in which the Landlord waives rent for the month of September 2023.

The Landlord testified that they agreed no rent was due on September 1, 2023, even though the Tenant occupied the rental unit from September 1, 2023 to September 5, 2023. The Landlord testified that they provided compensation equivalent to one month's rent as they waived the rent due on September 1, 2023.

## **Analysis**

### **Is the Landlord entitled to a monetary order for damage to rental unit and compensation for loss under the Act?**

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

RTB Policy Guideline 16 provides guidance on compensation for damage or loss. It states:

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

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 partial claim for damage to rental unit and compensation for loss under the Act as follows:

Item 1 – The Tenant admitted that their son caused damage to the sundeck and they are responsible for the burn mark in one location. I find the Tenant is responsible for the repair of one burn mark, and not the entire sundeck as claimed by the Landlord. In this case, as the sundeck is yet to be repaired, I find the Landlord has failed to establish the value of the damage or loss for the burn mark, and instead has claimed for the cost of the entire deck. I decline to award the full claimed amount for this item. To acknowledge the Tenant's breach of section 37 of the Act, I award the Landlord the nominal amount of \$100.00.

Item 2 – I accept the Tenant's testimony that some of the nail holes were present at the start of the tenancy, and were not listed on the CIR. However, the Tenant also admitted that there were additional scratches and gouges that required patching and painting. Based on the Landlord's documentary evidence of photographs, I find two of these gouges to be beyond normal wear and tear.

I find the Landlord did not prove the loss incurred, and the work is yet to be completed. Further, based on the evidence of the Landlord's photographs, I find it unreasonable for the Tenant to pay for the cost of repainting 50% of the rental unit. To acknowledge the damaged wall and door, and the breach of section 37 of the Act, I award the Landlord the nominal amount of \$100.00.

Item 5 – I find the Landlord did not prove the amount of or value of the damage or loss, as the door is yet to be replaced. Further, as I already addressed the gouges by way of a nominal amount, I decline to award a further amount for this item. This claim is dismissed without leave to reapply for the reasons noted above.

Item 3, Item 4 and Item 6– I find the Landlord failed to bring these items to the attention of the Tenant during the CIR. These items were noted after the fact, and I find the Landlord failed to prove that the tenant has caused the damage or loss and failed to comply with the Act or tenancy agreement. For these reasons, I decline to award a monetary order for Item 3, 4 and 6, and these claims are dismissed without leave to reapply.

Item 7 – I find the amount of \$100.00 to be excessive for repairs of the kitchen faucet, and supports the replacement of the faucet. Based on the testimony of the parties and the documentary evidence provided, I find the Landlord did not substantiate their claim for replacing the faucet. The Landlord has not incurred loss, as they have yet repair or replace the faucet. Further, the Landlord failed to submit the detailed amount that would cover the cost of repairs. For these reasons, this claim is dismissed without leave to reapply.

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 rental unit and compensation for loss under the Act, in the amount of \$200.00.

**Is the Landlord entitled 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?**

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.

The tenancy ended on September 5, 2023 and the Landlord made their application on September 13, 2023, I find that the Landlord did make their application within 15 days of the tenancy ending.

The \$1,050.00 deposits have accrued \$28.90 in interest. The Landlord is holding a security deposit for the total amount of \$1,078.90.

As the Landlord has been granted a monetary order of \$347.00 (\$200.00 for compensation of damage or loss under the Act, and \$147.00 as per the mutually settled agreement between the parties), I authorize the Landlord to deduct this amount (\$347.00) from the security deposit held in full satisfaction of the claim.

I order the Landlord to immediately return the balance of the deposits held, or \$731.90, to the Tenant. To give effect to this order, I grant the Tenant a monetary order in the amount of \$731.90.

**Is the Tenant entitled to a monetary order for compensation or loss under the Act?**

Section 50 of the Act states that if a landlord gives a tenant notice to end a periodic tenancy under section 49, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and by paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies. Section 50(2) states if the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

Section 51 (1) of the Act states a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the notice an amount that is equivalent of one month's rent payable under the tenancy agreement.

Section 50 (1.1) states a tenant referred to subsection 1 may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord. Section 50 (1.2) states if a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.



Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has established a claim for compensation for loss under the Act as follows:

I accept the Tenant received compensation equivalent to one month's rent, as they withheld rent due on September 1, 2023. As per section 50 (1.1) of the Act, rent was deemed to have been paid by the Tenant for the month of September 2023 and given the Tenant provided proper notice to end the tenancy earlier a permitted by the Act, the Landlord must refund any rent paid for a period after the effective date of the Tenant's Notice.

In this case, the monthly rent was \$2,174.00 for September 2023 (\$72.47 per day). The Tenant is responsible for the rent for a five day period, from September 1, 2023 to September 5, 2023, for the total amount of \$362.33. The Tenant is entitled to the refund of rent paid from September 6, 2023 to September 30, 2023, in the total amount of \$1,811.67.

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 Tenant is entitled to a Monetary Order for compensation for loss under the Act in the amount of \$1,811.67.

#### **Is the Tenant entitled to recover the filing fee for this application from the Landlord under section 72 of the Act?**

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

### **Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$2,643.58** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
Monetary Award for compensation or loss under the Act.	\$1,811.67
Monetary Award for the return of the balance of their security deposit.	\$731.91
Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.	\$100.00

<b>Total Amount</b>	<b>\$2,643.58</b>
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The Tenant is provided with this Order in 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, 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 *Residential Tenancy Act*.

Dated: April 16, 2024

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Residential Tenancy Branch