DECISION

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenant files his own application, seeking the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

Y.C. attended as the Landlord and was joined by his spouse, G.L.. The Landlord had the assistance of an interpreter, J.S., who translated English to Korean, and vice versa, on the Landlord's behalf.

D.J. attended as the Tenant and was joined by his spouse, E.C.. The Tenant's son, D.J., attended and assisted his parents in making submissions and translating English to Korean, and vice versa, on their behalf.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Landlord entitled to a monetary order compensating for damage to the rental unit caused by the Tenant or their guests?
2) Is the Tenant entitled to a monetary order compensating for loss or other money owed?
3) Is the Landlord entitled to retain the security deposit or should it be returned to the Tenant?
4) Is either party entitled to the return of their filing fee?

Background and Analysis

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

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit in September 2019.
- The Tenant moved out of the rental unit on October 31, 2023.
- Prior to January 1, 2022, rent of $2,300.00 was paid on the first day of each month.
- From January 1, 2022 onwards, rent of $2,600.00 was paid on the first day of each month.
- A security deposit of $1,150.00 was paid by the Tenants.

I have been provided with a copy of a tenancy agreement signed by the parties in February 2021. I am advised that the Landlord took on the tenancy after purchasing the property from the previous landlord in December 2020. The current tenancy agreement was signed after the Landlord took possession of the residential property.

Legal Test Relevant to Both Monetary Claims

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Is the Landlord entitled to a monetary order compensating for damage to the rental unit caused by the Tenant or their guests?

Section 37(2) of the *Act* imposes an obligation on tenants at the end of the tenancy to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

The Landlord's Monetary Claim

In his application, the Landlord seeks $7,140.00 in monetary compensation, describing his claim as follows:

> 1) Flooring(swollen with water) 2) kitchen cabinet door (swollen too with water)
> 3) garage door + Drain + entrance moulding broken wth mistake parking hitted

I understand that the amount claimed by the Landlord arises from a repair estimate dated November 4, 2023 put into evidence by the Landlord. The estimate particularizes the claim as follows:

Flooring Repair		$2,000.00
Kitchen Cabinet Repair		$1,500.00
Rain Drain		$100.00
Exterior Trim		$300.00
Garage Door		$3,400.00
	Subtotal	$6,800.00
	GST	$340.00
	Total	$7,140.00

Condition Inspection Report

I am advised by the parties that there was no written move-in condition inspection report, nor did the Landlord prepare one upon taking ownership of the residential property. I am further advised that there was no written move-out condition inspection report.

I am told that the Landlord took pictures at the end of the tenancy on the issues in dispute. The Landlord has also provided photographs from what appears to be a real estate listing, which I understand correspond with when the Landlord purchased the property in late 2020.

Flooring and Kitchen Cabinet

The Landlord advised that the flooring in front of the kitchen sink, as well as the cabinet immediately below the sink, were damaged. It was argued by the Landlord that the Tenant caused the damage due to a water leak from the kitchen sink, hypothesizing that the Tenant had overflowed water from the sink.

The Landlord's photographs show that the bottom rail to the cabinet doors below the sink are warped. Further, there appears to be some lifting at the seems of the laminate flooring. The photographs from the real estate listing do not clearly show the cabinet and flooring beneath the kitchen sink, either being obscured or captured a distance.

I am told that the Landlord has not yet undertaken any work for repairing the flooring or the cabinet. Other than the estimate, there are no receipts proving costs incurred for the repairs.

The Tenant disputes that he caused the damage, with his son advising that there was a water leak from an upper bathroom in 2019 that dripped into the kitchen. It was argued that the Landlord knew of the issue in 2021 when they took on ownership of the residential property.

I find that the Landlord has failed to establish that the Tenant was responsible for causing the damage. There is no condition inspection report, nor was one prepared when the Landlord took on ownership, such that I cannot ascertain which narrative put forward by the parties is more likely than the other. Both are equally plausible.

Further, the Landlord has not actually incurred any costs at this time. The purpose of compensation claims under s. 67 of the *Act* is to compensate an individual for costs incurred from a breach of the *Act*, regulations, or the tenancy agreement.

In this instance, there has been no loss, nor is there any indication that the work would be forthcoming. The loss is mostly speculative, irrespective of whether the Tenant caused the damage. It is certainly conceivable that a landlord could pocket a monetary award and never undertake repairs after the hearing, particularly when, as here, there is no functional issue with the problem be largely aesthetic in nature.

I find that the Landlord has failed to prove the Tenant's caused the damage to the flooring and cabinet door. I further find that the Landlord has failed to quantify his claim by demonstrating actual costs incurred to address the repairs.

Given this, I dismiss the Landlord's claims compensating for the flooring and kitchen cabinet, without leave to reapply.

Exterior Trim, Exterior Downspout, and Garage Door

The Landlord seeks the costs for repairing damaged exterior trim, a partially collapsed rain downspout, and replacement of the garage door. The Landlord alleges that the Tenant drove his car into these items, thus causing the damage.

The Tenant, through his son, denied causing any of the damage. It was argued that the garage door was still functioning when the tenancy was over.

Upon review of the photographs, it is unclear to me what damage, if any, has been sustained to the garage door and the exterior trim. The image of the garage door does not show a vehicle has been driven into and the only issue appears to be a small scuff, one that certainly would not warrant its replacement.

The exterior trim does not appear to be damaged at all. There is some splitting in the wood, though this appears to be consistent with checking in the wood as it dried. Critically, if a car did drive into the exterior trim, I would expect to see the exposed wood. Given that the trim is black, I would also expect this to be readily apparent in the photograph. No wood is exposed, and the exterior paint appears to be uniform.

With respect to the garage door and exterior trim, the Landlord has failed to establish that there is any damage at all.

Looking to the downspout, the photograph does show it to be deformed in two areas: one approximate 4 inches from the ground and another approximately 2 feet above the ground. Though I accept this is damaged, I have no evidence to support that the Tenants were somehow responsible. On the one hand, the Landlord says that the Tenant is responsible, on the other the Tenant denies responsibility. In the absence of any evidence to support one version over the other, I cannot make a finding that the Tenant is responsible for this damage.

I find that the Landlord has failed to establish that the Tenant breached s. 37(2) of the *Act* with respect to the exterior trim, downspout, and the garage door. These aspects of his claim are dismissed without leave to reapply.

Summary

I dismiss the Landlord's monetary claim compensating for damage to the rental unit in its entirety, without leave to reapply.

2) Is the Tenant entitled to a monetary order compensating for loss or other money owed?

As noted above, the Tenant's rent increased by $300.00 starting on January 1, 2022 and that the increased amount of $2,600.00 was paid from that point until the end of the tenancy. The parties confirm this.

The Tenant argued, however, that rent increase was improperly obtained by the Landlord. I am told by the Tenant's son that there was nothing in writing agreeing to the increased amount nor was there any revision to the tenancy agreement put into evidence. Further, the Tenant argued that the Landlord used the threat of ending the tenancy at the end of the initial fixed term, which as noted in the tenancy agreement ended on February 1, 2022, to extract his consent to pay the increased amount.

The Landlord confirms there was no written consent concerning the rent increase but argued that this was because there was a verbal understanding that the rent would be increased to $2,600.00. The Landlord argued that the Tenant did not raise any complaint with the rent increase until he received the Landlord's application.

Part 3 of the *Act* governs the process for increasing rent and limits the amount by which rent can be increased. Relevant to this dispute, s. 43(1) of the *Act* limits a rent increase to the amount set in the regulations or to what is "agreed to by the tenant in writing".

There is no dispute here that the rent increase of $300.00 far exceeded what was permitted under the Regulations, a point that the Landlord acknowledges in his written submissions. There is further no dispute that there was no written agreement on the rent increase. On its face, the rent increase was imposed in contravention of s. 43 of the *Act*.

Despite this, I take issue with the fact that the Tenant took no action for nearly two years, only filing to dispute the rent increase after the tenancy had ended. Section 7(2) of the *Act* requires the Tenant to take whatever reasonable steps to reduce or minimize their loss arising from the Landlord's breach of the *Act*, Regulations, or tenancy agreement. In this situation, the Tenant essentially maximized his loss.

This is particularly an issue as the Tenant was aware that the rent increase was being imposed in contravention of the limit imposed by the Regulations. The Tenant's own evidence includes a text message exchange where they communicated the same to the landlord, even going so far as including a link to a webpage maintained by the Residential Tenancy Branch concerning rent increases. It is not as though the Tenant was unaware of the issue, even prior to the rent increase being paid.

There was some allegation that the Landlord extracted consent from the Tenant by threatening to evict them. This is supported by the following message from the landlord found within the Tenant's evidence:

> If it's too inconvenient for you, let's just skip the renewal. My husband can either sell the house again, or we, as a couple, can move elsewhere. Renting a house is way easier, considering the current market conditions. I didn't find the past year's special rental rate unreasonable given the market prices, and I expected a more straightforward "okay." I apologize to you as well. Really sorry. Share your email, and we'll formally inform you.

I note that the message was originally in Korean, having been translated by the Tenant. I presume the translation is correct and, in any event, the Landlord would be able to read the original message in Korean to confirm its accuracy.

To be clear, the end of the fixed term, regardless of whether the tenancy agreement was renewed or not, would not have brought about the end of the tenancy. The tenancy would have reverted, as it did in this case, to a monthly periodic tenancy as per s. 44(3) of the *Act*. Further, the tenancy agreement, though making reference to ending at the end of the term, did not specify the reason for doing so and was not a true fixed term tenancy permitted by s. 44(2)(b) of the *Act* and s. 13.1 of the Regulations. Simply put, there was no fixed term tenancy.

The evidence provided by the Tenant suggests that the Landlord may have used this threat to obtain the Tenant's consent. However, this does not change the fact that the Tenant took no action to dispute the rent increase by filing an application with the Residential Tenancy Branch, something that he appears to have been aware of well before he did.

I find that the Tenant failed to mitigate his damages by failing to dispute the illegal rent increase much sooner. It is inappropriate, in my view, for the Tenant, knowing his legal rights, to then sit on a claim for nearly two years.

I dismiss the Tenant's claim for monetary compensation, without leave to reapply.

3) Is the Landlord entitled to retain the security deposit or should it be returned to the Tenant?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch. A landlord may not claim against the deposit if the application is made outside of the 15-day window established by s. 38 or their right to do so has been extinguished by ss. 24 or 36.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

Preparing a written condition inspection report is the responsibility of the Landlord as per ss. 23 and 35 of the *Act*. No move-in condition inspection report was prepared, no condition inspection was prepared when the Landlord took ownership of the residential property, and no move-out condition inspection report was prepared. All of this was in clear breach of the Landlord's obligations as per ss. 23 and 35 of the *Act*.

I find that the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished under ss. 24 and 36 of the *Act*.

I am advised that the Landlord continues to retain the security deposit in full.

The Tenant indicates that their forwarding address was provided on October 31, 2023 at the time they moved out of the rental unit. The Landlord acknowledges receiving an address from the Tenant at that time, though argued that it was incorrect or incomplete. I note that I have no evidence to support whether the Tenant's forwarding address was provided in writing on October 31, 2023.

The Tenant's evidence contains a Notice of Forwarding Address signed on November 18, 2023. The Tenant's evidence also contains a proof of service form, showing that the forwarding address was left at the Landlord's door on November 20, 2023. The Landlord acknowledges receipt of the forwarding address later, saying it was served with the Tenant's application. I note that the Tenant's application was filed on December 27, 2023.

I accept the Tenant's evidence that the forwarding address was left at the Landlord's door on November 20, 2023. I have no evidence to support that this was done, in writing, before that date. Given the Landlord's inability to confirm when the Tenant's forwarding address was received, I deem under s. 90 of the *Act* that it was received on November 23, 2023.

As the Landlord's right to claim against the security deposit was extinguished, the security deposit had to be returned, in full, within 15 days of November 23, 2023. This was not done. Given this, I find that the Tenant is entitled to double the return of the security deposit, which in this case is $2,300.00 ($1,150.00 x 2).

Including interest, I order that the Landlord return $2,330.81 ($2,300.00 + $30.81) to the Tenant.

4) Is either party entitled to the return of their filing fee?

I find that both parties were substantially unsuccessful on their applications. Accordingly, I find that neither are entitled to their filing fee.

Both claims under s. 72 of the *Act* for the filing fees are dismissed without leave to reapply.

Conclusion

I dismiss the Landlord's monetary claim, without leave to reapply.

I dismiss the Tenant's monetary claim, without leave to reapply.

I grant the Tenant the double return of the security deposit, with interest, in the amount of $2,330.81.

I dismiss both claims under s. 72 of the *Act* for the parties' filing fees, without leave to reapply.

Pursuant to ss. 38 and 67 of the *Act*, I order that the Landlord pay **$2,330.81** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. Should the Landlord fail to comply with the monetary order, it may be enforced by the Tenant at the BC Provincial 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: April 6, 2024

Residential Tenancy Branch