

DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- a Monetary Order for the return of all or part of their security deposit
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package by registered mail sent February 23, 2024. The Landlord served the photos provided as evidence by text message. The Tenant does not acknowledge service by text message, but confirms they have received the photos of the rental unit as described from the Landlord at the end of the tenancy.

I find the Landlord's photo evidence is relevant to the proceeding, and the Tenant has knowledge of the photos provided. With reference to the Rules of Procedure, I find it would not be procedurally unfair to refer to the Landlord's evidence for this dispute. Therefore, I accept the Landlord's evidence.

The Landlord acknowledged being served with the Tenant's hearing package and evidence sent by registered mail on April 6, 2024.

Preliminary Matter

Section 64(3)(c) says the arbitrator may amend an application for dispute resolution, subject to the Rules of Procedure.

Rules of Procedure 7.12 says the arbitrator may amend an application at the hearing if the amendment can be reasonably anticipated by the respondent.

The Landlord included claims for the cost to clean the rental unit under their claim for damages. Claims about cleaning the rental unit are not considered damage claims under the Act. Therefore, under section 64(3)(c) of the Act, I have amended the Landlord's application to include the following issue:

- a Monetary Order for compensation for loss under the Act, regulation or tenancy agreement

The Landlord clearly describes cleaning in their original application and dispute notice. Therefore, I find the Tenant was aware of the nature of the Landlord's claim, and amending the application to correct the Landlord's claim for cleaning does not unfairly prejudice the Tenant.

Issues to be Decided

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

Is the Landlord entitled to a Monetary Order for compensation for loss under the Act, regulation or tenancy agreement?

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 all or a portion of their security deposit?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Facts 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.

This tenancy began on July 15, 2022, with a monthly rent of \$1800.00 due the first day of each month, and with a security deposit of \$900.00.

Both parties confirmed that the Landlord did not complete a condition inspection report at the start or end of the tenancy. The Tenant moved out of the rental unit on January 31, 2024. The Tenant provided their forwarding address to the Landlord in writing, by email, on February 2, 2024. The Landlord acknowledges receiving the Tenant's forwarding address.

The Landlord claims \$900.00 for cleaning and making repairs to the rental unit after the tenancy ended.

The Landlord claims the Tenant damaged the rental unit as follows. The Tenant made a large hole in the wall at the entryway, and left various other scuffs, dings, and small holes on the walls throughout the rental unit. The Tenant did not repair the wall damage. The Landlord patched and repaired the walls, and painted the repaired areas. The Landlord completed the work themselves to minimize their loss.

The Landlord provided photos of the large hole in the wall as evidence to support their claim. The Landlord did not provide receipts or proof of the value of their loss, but estimates they spent 4 hours repairing the walls in the rental unit.

The Tenant testified that the large hole in the entryway wall was present from the start of the tenancy. The Tenant denies causing any wall damage during the tenancy. The Tenant claims any small nail holes or wall scuffs are regular wear and tear.

The Landlord claims the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy. The Landlord claims the Tenant failed to steam clean the carpets in the rental unit. The Landlord testified that they spent 9 hours steam cleaning the carpets, and were unable to remove a large red stain the Tenant left in the bedroom.

The Landlord testified that the Tenant failed to clean the appliances, bathrooms, floors, windows, and blinds in the rental unit. The Landlord claims they spent significant time cleaning the stove in the rental unit. The Landlord claims they spent 3 hours per day, for three weeks, cleaning the rental unit.

The Landlord provided photos of the rental unit taken after the tenancy as evidence to support their claims.

The Tenant testified that they cleaned the rental unit before they moved out. The Tenant denies leaving the rental unit unclean, and claims they wiped the appliances and walls, and cleaned the bathrooms and floors. The Tenant claims they did their best to clean the stove reasonably, but it was an old stove and was already dirty when they moved into the rental unit.

The Tenant rented a carpet steam cleaner and cleaned the carpets on January 29, 2024. The Tenant provided receipts for this rental as evidence to support their claim.

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

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.

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.

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

I find the Landlord failed to provide any evidence of the condition of the rental unit before the tenancy began. The Landlord did not complete a move in condition inspection report. The Landlord did not provide photos of the walls taken before the tenancy began.

For the above reasons, I find the Landlord has failed to prove on a balance of probabilities that the Tenant caused damage to the walls in the rental unit, and breached section 32 of the Act by not repairing the damage.

Therefore, the Landlord's application for a Monetary Order for damage to the rental unit is dismissed, without leave to reapply.

Is the Landlord entitled to a Monetary Order for compensation for loss under the Act, regulation or tenancy agreement?

Section 37 of the Act says the tenant must leave the rental unit reasonably clean at the end of the tenancy.

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.

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

Based on the photos provided by the Landlord as evidence, I find the Tenant failed to leave the stove and blinds in the rental unit reasonably clean. I find the Landlord failed to prove that any other areas of the rental unit were not reasonably cleaned by the Tenant.

I find the Landlord failed to prove the Tenant caused the red stain on the carpet, as there is no evidence of the condition of the carpet before the tenancy. I find the Tenant provided evidence that they steam cleaned the carpets.

The Landlord failed to provide any evidence of the value of their loss. The Landlord did not provide receipts for cleaning materials, or evidence of lost wages. I am not convinced that the Landlord required 3 hours per day for three weeks to bring the rental unit to the standard of reasonably clean as required by the Act.

Tenancy policy guideline 16 says that nominal damages may be awarded when a Landlord cannot prove the value of their loss on a balance of probabilities, but it is clear that a breach of the Act has occurred.

I find the Tenant breached section 37 of the Act by not cleaning the stove and blinds to the standard of reasonably clean. Therefore, I grant the Landlord award a nominal award of \$100.00 for cleaning the stove and blinds in the rental unit.

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

Sections 24 and 36 of the Act extinguish the Landlord's right to claim against a Tenant's security deposit for damage to the rental unit if the requirement to complete condition inspection reports have not been met. However, these sections do not prohibit the Landlord from claiming against the security deposit for other losses related to the tenancy, such as cleaning the rental unit.

As the Landlord's application includes claims about cleaning the rental unit, I find that the Landlord was within their right to make a claim against the Tenant's security deposit.

Section 38 of the Act states that within 15 days of the date that the landlord receives the tenant's forwarding address in writing, a landlord must make an application for dispute resolution to claim against the Tenant's security deposit.

Section 44 of the Regulation says that document served by email is deemed to be received the third day after it is emailed.

As the Tenant provided their forwarding address to the Landlord by email on February 2, 2024, I deem the Landlord received the Tenant's forwarding address in writing on February 5, 2024. As the Landlord applied on February 19, 2024, I find the Landlord made their application to claim against the Tenant's security deposit within the time limit under section 38 of the Act.

Section 72 of the Act says an arbitrator may order that a monetary award granted to the landlord may be deducted from the tenant's security deposit.

For the above reasons, I find the Landlord is entitled to retain \$100.00 from the Tenant's security deposit, in full and final satisfaction of the monetary award granted for cleaning the rental unit.

Is the Tenant entitled to the return of all or a portion of their security deposit?

Section 38.1 says the arbitrator may order any a portion of the Tenant's security deposit, plus interest, that is not awarded to the Landlord.

I have found the Landlord is entitled to retain \$100.00 from the Tenant's security deposit under section 72 of the Act.

Therefore, I find the Tenant is entitled to the return of the remaining balance of the security deposit, \$800.00, plus interest, under section 38.1 of the Act.

Is the Landlord entitled to recover the filing fee for this application from the Tenant? Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As both parties were partially successful in their applications, and each party paid \$100.00 for their filing fee, I find that neither party is entitled to recover the filing fee for this application.

The Landlord's application to recover the filing fee of \$100.00 from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

The Tenant's application to recover the filing fee of \$100.00 from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I find the Landlord is entitled to a nominal award of \$100.00 for cleaning the rental unit. I Order the Landlord to retain \$100.00 from the Tenant's security deposit in full and final satisfaction of this award under section 72 of the Act.

I grant the Tenant a Monetary Order of **\$828.70** for the return of the remaining balance of the security deposit, plus interest, under section 38.1 of the Act.

The Tenant must serve this Order to the Landlord as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Tenant's security deposit, plus interest	\$928.70
Landlord's nominal award	- \$100.00
Total Amount to be returned to Tenant	\$828.70

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: June 13, 2024

Residential Tenancy Branch