

DECISION

Introduction

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

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also 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
- A Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord was served on March 28, 2024, 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.

The Tenants' Agent MJS (the Tenants' Agent) argued that they received the Landlord's evidence but never received the Proceeding Package and was not fully aware of the claims. The Landlord argued that they believe they provided everything, but they cannot be certain. The details of the claim were read out to the Tenants' Agent. The Tenants'

Agent advised they were ready to proceed today despite not knowing the full details of the claim in advance.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

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

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

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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

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 1, 2024 with a monthly rent of \$1,600.00, due on first day of the month, with a security deposit and pet damage deposit each in the amount of \$800.00. The parties advised the deposits were paid sometime before February 1, 2024. The parties disagree on the date the tenancy ended, the Landlord argued it contractually ended March 31, 2024, and the Tenants' Agent argued it ended March 16, 2024.

The Landlord filed an application seeking damages, compensation and requested to retain the security and pet damage deposits. The Tenants filed an application seeking compensation.

Condition Inspection Report

The parties advised a move-in condition inspection report was completed January 27, 2024. The Landlord advised a copy was provided via email likely the same day and the Tenants' Agent could not confirm if this did or did not occur. The parties advised a move-out condition inspection report was completed March 16, 2024, and a copy was provided by email on March 17, 2024. The forwarding address was sent by registered mail March 27, 2024 and the tracking number indicates it was received April 2, 2024. The condition inspection reports were provided as evidence.

Landlord's Damage Claim

The Landlord is seeking the following damages:

Item	Description	Amount
1	Carpet and Underlay	\$1,764.73
2	Odor Filters	\$65.77
	TOTAL	\$1,830.50

#1 Carpet and Underlay/ #2 Odor Filters

The Landlord's position is that the Tenants cats caused significant staining and smell to the carpet in the rental unit. The Landlord advised the carpet was installed in 2022 and that the previous tenant did have a cat, but it was not present in the rental unit for the last two months of their tenancy. The Landlord advised there was no issue with the carpet noted on the move-in condition inspection report and they did not notice anything during the move-in inspection. The Landlord advised the original amount claimed for the carpet was \$1,874.99 which was based on a quote and the new amount they are seeking is reduced to \$1,764.73. The odor filters are in reference to filters used to combat the odor.

The Tenants' Agent argued that the damage was not done by the Tenants cats. The Tenants' Agent advised the Tenants sent a text message to the Landlord shortly after

the move-in condition inspection report was completed and complained of a smell. The text messages that were submitted into evidence stated:



The Tenants also provided a letter from an individual who assisted with the move in, and the letter stated “I [name and address of witness], was witness to cat urine odor being present at [the rental unit address] on Saturday June 27, 2024. I detected this distinctive, unpleasant odor while we started moving in boxes and before [the Tenants] had brought any pets into the suite. The odor was strongest in the living room, between the bedroom door and fireplace area”. The Tenants’ Agent also argued the quote provided by the Landlord stated the damage was limited to the living room but the area that was repaired seemed larger than the square footage of the living room.

Landlord’s Compensation Claim

The Landlord’s position is that the carpet installation delayed the Landlord’s ability to re-rent the rental unit and they are seeking \$600.00. The Landlord advised they were only able to get a new tenant for April 16, 2024, because the carpet installation was not completed until April 11, 2024. The Landlord advised there was some difficulty getting a contractor in for a quote and installation.

The Tenants’ Agent argued the Landlord choose to replace the carpet and the damage was not caused by the Tenants.

Tenants’ Compensation Claim

The Tenants are seeking \$800.00 because they paid the full amount of rent for March 2024, but only had possession of the rental unit until March 16, 2024. The Tenants’ Agent argued the Tenants felt pressured to sign a mutual agreement to end tenancy which originally was going to end the tenancy on April 30, 2024; however, the Tenants

were able to secure a rental unit sooner and asked to change the mutually agreed upon move out date. The Tenants' Advocate argued the Tenants asked if they could pay half a month rent for March 2024 and move out by March 15, 2024, but the Landlord declined and required the Tenants to pay a full month rent and changed the move out date to March 31, 2024. The Tenants Advocate argued that the Tenants began living in their new unit but needed the full month of March 2024 to remove all their belongings; however, the Landlord called Tenant MG on March 16, 2024, and required they complete their move and handover the keys on March 16, 2024. The Tenants position is that they handed over the keys to the rental unit and had all their belongings out of the rental unit by March 16, 2024. Copies of the mutual agreement were provided in evidence.

The Landlord's position is that it was expected that the Tenants pay the full amount of rent for March 2024, but everyone agreed they would move out by March 15, 2024. The Landlord argued the bottom of the amended mutual agreement to end tenancy even stated "Amended to reflect Tenant has advised move out date of 15/03/2024". The Landlord argued the parties originally agreed to April 30, 2024, because the Tenants were required to give one clear month but once the Landlord found out they secured another place early they wanted to accommodate them but still required the full amount of rent for March 2024. The Landlord argued the Tenants provided the move-out date of March 15, 2024, and the Landlord was just holding the Tenants to their commitment.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Is the Landlord 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 Carpet and Underlay/ #2 Odor Filters

Section 21 of the Regulation states that “in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has preponderance of evidence to the contrary”.

The move-in condition inspection report does not indicate that there was any odor or carpet damage when the Tenants moved into the rental unit. The Tenants have provided two pieces of evidence to dispute the condition of the carpet prior to the Tenants moving in, which is the text message sent to the Landlord shortly after the move-in report was completed and the letter from the witness who assisted with the move-in. However, I find that those two pieces of evidence are not sufficient to demonstrate that the Tenants cats were not responsible for any of the damage. During the text message exchange where Tenant KS informs the Landlord about the odor discovered in the carpet, Tenant KS states “the smell was there before he got here, but you’re right it might’ve gotten worse after his arrival.” I find that in this contradicts part of the Tenants argument that their cats were not responsible for any of the damage. As such, I find that the Tenants breached section 37(2) of the Act as the carpet was damaged and as a result the Landlord suffered a loss. However, given that there is some evidence to support that there was already at least some damage and odor to the carpet prior to the Tenants moving in, I find that the Tenants are only partially responsible for any costs. Additionally, I find that the Landlord only partially mitigated their loss, as they were informed about an odor at the beginning of the tenancy and only provided a spray and did not have the carpet cleaned again. I award the Landlord \$915.24, as I find this takes into consideration the partial mitigation and the evidence provided by the Tenants that there was existing odor to the carpet. I also find that this amount addresses the concerns raised by the Tenants’ Agent that the amount of carpet replaced seems larger than the square footage of the living room.

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

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 did not submit any evidence to prove the amount or value of the damage or loss they suffered. As such, I decline to award any compensation for the loss of rent.

For the above reasons, the Landlord's application for a Monetary Order for money owed for compensation under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, a tenant must prove:

- the landlord 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 tenant acted reasonably to minimize that damage or loss

The Tenants are seeking \$800.00 as they paid rent for March 2024, but only had access and possession of the rental unit until March 16, 2024. The parties advised that the Tenants moved out March 16, 2024, and the keys were returned on that date. The Landlord argued the Tenants provided a move-out date of March 15, 2024, but full amount of rent for March 2024 was owed.

Under section 1 of the Act rent is money paid by a tenant to a landlord in return for the right to possess a rental unit. I find that the Tenants paid full rent for March 2024 but only had the right to possess the rental unit until March 16, 2024. The tenancy ended on March 16, 2024, when the keys were returned to the Landlord and all the Tenants belongings were removed. As such, I find that the Tenants no longer has the right to possess the rental unit after March 16, 2024, and the Landlord did not comply with the tenancy agreement or act as the Tenants were not provided with the right to possess the rental unit for the remainder of March 2024 despite rent being paid for March 2024. I find that the Tenants suffered a loss as they paid full rent for March 2024 but no longer had access to the rental unit. As such, I find that the Tenants are entitled to the return of pro-rated rent for the remainder of March 2024 that they did not have possession of the rental unit. I award the Tenants \$774.19 ($\$1,600.00/31 \times 15$ days).

For the above reasons, the Tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of

the Act is granted. The Tenants are entitled to a Monetary Order of \$774.19 for pro-rated rent for March 2024.

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

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. As the forwarding address was provided on April 2, 2024, and the Landlord made their application on April 7, 2024, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties agree a move-in and move-out condition report were completed, and the move-out report was provided to the Tenants the same day. The Landlord argued they believe a copy of the move-in report was provided via email and the Tenant's Agent was not able to provide any confirmation if the report was or was not provided. As there has been no dispute that the Landlord provided a copy of the move-in report, I find that the move-in report was provided. As such, I find that neither party extinguished their rights to the security deposit or pet damage deposit.

As stated at section 38(7) of the Act, the pet deposit can only be used for damage caused by a pet to the residential property, unless the tenant agrees otherwise. I find that the Landlord did claim for pet damage and met the requirements of the Act.

I will offset any amount owed by the Tenants to the Landlord against any amount owed by the Landlord to the Tenants. Additionally, under section 72 of the Act, I allow the Landlord to retain a portion of the Tenants' security and pet damage deposits of \$1,600.00, plus interest, in partial satisfaction of the monetary award and the remaining amount is returned to the Tenants.

Is the Landlord entitled to recover the filing fee for this application from the Tenants or is the Tenants entitled to recover the filing fee for this application from the Landlord?

As both parties were partially successful, I find that the filing fees offset each other and neither party is entitled to the return of the filing fee.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$1,474.65** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement under section 67 of the Act to the Tenants	\$774.19
authorization to retain a portion of the Tenants' security and pet damage deposits, plus interests, in partial satisfaction of the Monetary Order requested under section 38 of the Act and the rest is returned to the Tenants	\$1,615.70
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act to the Landlord	-\$915.24
Total Amount	\$1,474.65

The Tenants are 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.

The Landlord's application for a Monetary Order for money owed or compensation for loss under the Act, regulation or tenancy agreement 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: June 7, 2024

Residential Tenancy Branch