

## **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

The Tenant filed a cross-application on July 19, 2024, requesting a monetary order for the return of double their deposit under section 38 of the Act, and authorization to recover their filing fee under section 72 of the Act.

### **Service of Notice of Dispute Resolution Proceeding**

I find both parties acknowledged service and were duly served in accordance with the Act.

### **Preliminary Matters**

Although the Landlord's application shows they filed a claim for damages relating to section 32 of the Act, their application and evidence clearly indicate their claim is for cleaning under section 37 of the Act.

During the hearing, both parties understood the claim was for cleaning, and presented evidence and argument based on that claim. Therefore, under section 64(3)(c) of the Act, I amend the application to reflect the claim for cleaning under section 37 of the Act.

Under section 64(3)(c) of the Act, I amend the application to reflect both named Landlords as indicated on the applications and evidence before me.

## Issues to be Decided

Is the Landlord entitled to compensation for cleaning and removal of items under sections 37 and 67 of the Act?

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

Is either party entitled to recover their filing fees under section 72 of the Act?

## Facts and Analysis

Evidence was provided to show that this tenancy began on September 1, 2019, with a monthly rent at the end of the tenancy of \$1,660.00, due on the first of the month, with a security deposit of \$775.00.

Interest of \$30.87 has accrued on the deposit to the date of this hearing. The Landlord holds the full deposit plus interest, totalling \$805.87, in trust pending the outcome of this hearing.

The parties agree they completed a move in inspection August 28, 2019. The Tenant provided notice to end the tenancy effective June 30, 2024. The Tenant provided their forwarding address on June 27, 2024.

The parties agree they completed a pre-move out inspection on June 10, 2024. The Tenant did not believe they were required to complete any additional cleaning after that inspection.

The Landlord provided a copy of a pre-move out inspection, a portion of which is reproduced below.

### Issues Observed at Pre Move Out Walkthrough

Cleaning	Unit clean
Carpet Cleaning	Tenant to hire cleaner Carpet will need professional cleaner, but it is in great condition
Painting	Few marks on the wall
Flooring	Few marks on the wall
Other	

The Landlord completed a move out inspection on June 27, 2024, at noon, without the Tenant or the Tenant's agent present. The Landlord says they followed the Tenant's

request when scheduling this inspection and they expected the Tenant's agent to attend.

The parties provided a copy of email communications between them, discussing the move out inspection. The Landlord says the agent was not available at the appointed time, so they invited the agent's wife to attend the inspection, and she declined. The Tenant says the Landlord never directly agreed to allow an agent to attend for the Tenant, so they only informed their agent to provide the keys to the Landlord.

Based on the emails in evidence, I find the Landlord was reasonable to assume the Tenant's agent would attend the move out inspection. I find the Landlord cannot be held responsible for the Tenant's agent declining to attend the move out inspection. Therefore, I find the Landlord maintained their right to file a claim against the deposit.

Even though permission is not required, I find the Tenant did not believe they had permission to have an agent attend the move out inspection for them. Given that the Tenant attended the pre-move out inspection on June 10, 2024, I find they upheld their obligation to attend a move out inspection as required by the Act. Therefore, I find the Tenant maintains their right to claim for the return of their deposit.

The Tenant says they left the unit reasonably clean. The Tenant acknowledges they did not shampoo the carpets. The Tenant says they would have cleaned the unit more thoroughly if the Landlord had asked them to do so after the pre-move out inspection.

The Tenant says they left behind a few useful items as a gesture of goodwill, including items such as an umbrella, hand soap, and new garbage bags. The Tenant says the computer chair on the balcony was there at the outset of the tenancy and did not belong to them.

The Landlord applied to retain the security deposit on July 12, 2024, for cleaning, carpet cleaning and disposal of items. I find the Landlord agreed to withdraw their claim of \$150.00 for disposal of items.

**Is the Landlord entitled to compensation for cleaning and removal of items under sections 37 and 67 of the Act?**

I find the Landlord withdrew their claim for \$150.00 for disposal of items. Even if the Landlord had not withdrawn the claim, I find they did not provide sufficient evidence to establish the amount of the claim. So, I decline to award this amount.

Section 37 of the Act says that a Tenant must leave the rental unit in a reasonably clean condition at the end of the tenancy. Policy Guideline 1 says that a Tenant is not

responsible for cleaning to bring the premises to a higher standard than that set out in section 37 of the Act.

Based on the pre-move out inspection, dated June 10, 2024, I find the Landlord indicated the unit was reasonably clean. I find Tenant was reasonable to assume the unit was cleaned to a satisfactory standard. Therefore, I decline to award the Landlord compensation for cleaning.

Policy Guideline 1 says the Tenant is responsible for shampooing the carpets at the end of a tenancy of more than one year. I do not accept the Tenant's argument that were not required to shampoo the carpets because the carpets were not clean at the beginning of the tenancy. If that was the case, I find they could have requested the Landlord to clean the carpets at that time. I find the cleanliness of the carpets at the start of the tenancy does not impact the Tenant's responsibility to clean the carpets at the end of the tenancy.

I find the June 10, 2024, pre-move out inspection indicates the Landlord required the Tenant to have the carpets professionally cleaned and the Tenant agreed to this. I find the Tenant acknowledged they did not have the carpets professionally cleaned.

Therefore, based on the receipt in evidence, I award the Landlord \$200.00 for carpet cleaning. I decline to calculate tax on this amount because the receipt does not indicate tax charged other than a handwritten note added after the document was generated.

**Is the Tenant entitled to the return of their deposit under section 38 of the Act?**

I find the Tenant is entitled to the return of the remainder of their deposit, less \$200.00 for carpet cleaning.

Under section 72 of the Act, I allow the Landlord to retain \$200.00 from the Tenant's deposit of \$805.87 currently held in trust. I grant the Tenant a monetary award for the return of the remainder of their deposit of \$605.87.

**Is either party entitled to recover their filing fees under section 72 of the Act?**

Since each party was partly successful in their claim, they are each entitled to their filing fee. Those amounts will offset each other under section 72 of the Act. As a result, no award is required.

## Conclusion

Under section 72 of the Act, I authorize the Landlord to deduct \$200.00 from the Tenant's security deposit in satisfaction of their claim for carpet cleaning.

I grant the Tenant a Monetary Order in the amount of **\$605.87** for the return of the remainder of their deposit plus interest. The Tenant is provided with this Order on 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, it 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: September 26, 2024

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Residential Tenancy Branch