

## **DECISION**

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord applied 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 Tenants’ 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 Tenants under section 72 of the Act

The Tenants applied for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

Landlord M.L.Z. attended the hearing for the Landlord.

Tenant R.F. and Tenant V.P. attended the hearing for the Tenants.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)**

Both parties acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I therefore found the Proceeding Packages duly served in accordance with the Act, and the hearing proceeded as scheduled.

### **Service of Evidence**

Both parties acknowledged receipt of the documentary evidence and raised no concerns regarding service. I therefore found the documentary evidence before me duly served on each party in accordance with the Act and accepted it for consideration.

## **Preliminary Matters**

The following issue was withdrawn at the outset of the hearing with leave to reapply:

- a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act

The Tenants requested to withdraw this issue from consideration. In accordance with section 64 (3)(c) of the Act, I have permitted the application to be amended and this issue is withdrawn.

## **Issues to be Decided**

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

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under the Act?

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

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit under the Act?

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.

Both parties confirmed that this tenancy began on August 16, 2019, with a monthly rent of \$2,278.00, with a security deposit in the amount of \$1,100.00 that was paid on August 15, 2019.

The Landlord confirmed receipt of the forwarding address on June 30, 2024 and submitted her application to retain the Tenants' security deposit on July 13, 2024.

The Tenants applied for the return of their security deposit on July 17, 2024.

Both parties agreed that the rental unit (the Unit) is a 2-storey townhouse consisting of upper floor and lower floor, and that the Unit was brand-new when the Tenants moved in.

Both parties attended the move-in and move-out inspections, and signed the condition inspection reports.

The Landlord is claiming \$8,850.00 in compensation for costs related to the following:

- Ceiling lights replacement in the amount of \$270;
- Handles damage repair in the amount of \$650;
- Stair nosing repaint in the amount of 150;
- Wall damage, repair and repaint in the amount of \$7,300; and
- Laundry room carpet replacement in the amount of \$480.

The Landlord submitted an invoice issued by a contractor in the amount of \$8,850.00. The Landlord stated that she has paid a deposit of \$885.00 to the contractor and scheduled for the above repair on October 17, 2024.

#### *Ceiling lights replacement*

The Landlord said that the ceiling lights of the master bedroom were rusted due to bathroom moisture because the Tenants did not use the bathroom fan.

Tenant R.F. denied that the ceilings lights have rusted due to bathroom moisture. She stated that they have rusted as a result of a ceiling leakage because they were not located in the bathroom ceiling but in the master bedroom ceiling.

#### *Handles damage*

The Landlord said that the handles of the cabinets and drawers in the kitchen and bathrooms are damaged and corroded because the Tenants have used a wrong detergent to clean them.

Tenant R.F. said that the handles are not damaged. She stated that the corrosion is reasonable wear and tear because the handles have been used for five years.

#### *Stair nosing repaint; wall damage, repair and repaint*

The Landlord said that the living room floor stair nosing and the walls are very dirty with ball marks and scratches because the Tenants' children have been playing soccer in the Unit.

Tenant R.F. said that the floor stair nosing and the walls are not damaged, except for a corner wall of the master bedroom due to the ceiling leakage.

Tenant R.F. denied allowing the children to play soccer inside the Unit. Tenant R.F. said that the Landlord saw the soccer equipment in the Unit and mistakenly thought that the Tenants' children were playing soccer inside the Unit.

Tenant R.F. further stated that in 2023, Tenant V.P. painted all the walls downstairs as well as the corridors and the master bedroom walls upstairs, particularly the areas that the children had touched and scribbled on.

#### *Laundry room carpet replacement*

The Landlord said that the Tenants installed a second-hand washer in the laundry room and that the plumbing work was done unprofessionally, causing the laundry room carpet constantly soaked with the water pipe leaks.

Tenant R.F. replied that the Tenants had to install a second-hand washer in the laundry room because the original washer provided to the Tenants was not working and the Landlord refused to replace it.

Tenant R.F. stated the laundry room carpet is not damaged and only needs to be cleaned. However, the Tenants could not clean the carpet because the washer was fixed on top of it. She further stated that the Tenants have paid \$500 for cleaning services and \$300 for professional carpet cleaning services.

### **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

#### **Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?**

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

Policy Guideline 1 states, in part, that a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest, but that a tenant is not responsible for reasonable wear and tear to the rental unit.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

### *Ceiling lights replacement*

I find that the Landlord has failed to establish on a balance of probabilities that the Tenants are responsible for the ceiling lights replacement. In reaching this conclusion, I have considered the photographs provided by the Landlord and the testimony provided by the Landlord and Tenant R.F. I find it is more likely than not that the rusting was due to a ceiling leakage and not the result of bathroom moisture.

This aspect of the Landlord's claim is dismissed.

### *Handles damage*

I find that the Landlord has failed to establish on a balance of probabilities that the Tenants are responsible for the handles damage. In reaching this conclusion, I have preferred Tenant's R.F.'s testimony that the handles are not damaged. In reviewing the photographs provided by the Landlord, I find that the corrosion was due to reasonable wear and tear and not the result of deliberate damage or neglect.

This aspect of the Landlord's claim is dismissed.

### *Stair nosing repaint; wall repair and repaint*

The Landlord claimed compensation for painting the stair nosing as well as repairing and painting the walls of the Unit.

Residential Tenancy Branch Policy Guideline #40 provides that if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. The useful life of interior paint is 4 years.

Both parties agreed that the Unit was brand new. I find that the interior paint was more than four years old when the tenancy ended on June 30, 2024, and that it was beyond its useful life. As a result, I find that the Landlord is not entitled to compensation with respect to the painting of the stair nosing and the walls of the Unit.

This aspect of the Landlord's claim is dismissed.

### *Laundry room carpet replacement*

The Landlord claimed compensation for replacement of the laundry room carpet.

Guideline 1 states that generally, at the end of the tenancy, a tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, the tenant will be

held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. Guideline 40 provides that carpet has an estimated useful life of 10 years.

Based on the photos submitted by the Landlord, I find there were stains on the laundry room carpet when the Tenants moved out. While I accept the Tenants had paid \$300 for professional carpet cleaning services, I find that the stains were beyond cleaning and therefore constituted a permanent damage to the carpet.

I find the estimate cost of \$480.00 provided by the Landlord for the replacing the laundry room carpet a reasonable estimate of compensation. Therefore, I find the Landlord is entitled to compensation of \$480.00 for the replacement of the laundry room carpet.

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 the rental unit under section 67 of the Act, in the amount of \$480.00.

**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 Landlord received the Tenants' forwarding address on June 30, 2024 and applied to claim against the security deposit on July 13, 2024, I find that the Landlord's application was made in accordance with timelines set forth within the Act.

The Landlord continues to hold the Tenants' security deposit of \$1,100.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain a portion of the Tenants' security deposit in the amount of \$480.00 in satisfaction of the Monetary Order.

**Are the Tenants entitled to a monetary order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act?**

As I have ordered the Landlord to retain a portion of the Tenants' security deposit in the amount of \$480.00, the Tenants are entitled to a monetary award in the amount of \$620.00, for the return of the remaining portion of the security deposit, plus interest accrued on the security deposit, which is \$45.91 as of the date of this Decision.

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

As both parties have been partially successful in their claims, I find that neither of them is entitled to recover \$100.00 filing fee from each party.

**Conclusion**

I grant the Tenants a Monetary Order in the amount of **\$665.91** under the following terms:

Monetary Issue	Granted Amount
Security Deposit with interest	\$1,145.91
Landlord's Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$480.00
<b>Total Amount</b>	<b>\$665.91</b>

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: October 21, 2024

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Residential Tenancy Branch