

## **DECISION**

### **Introduction**

This matter was adjourned to written submissions following a hearing on September 27, 2024 regarding the parties' applications for dispute resolution under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$2,110.88 for damage to the rental unit under section 67 of the Act;
- authorization to retain the security deposit of \$995.00 under section 38 of the Act; and
- authorization to recover the Landlord's \$100.00 filing fee from the Tenants under section 72 of the Act.

Tenant AJ applied for:

- return of the security deposit of \$812.66 under section 38 of the Act; and
- authorization to recover Tenant AJ's filing fee from the Landlord under section 72 of the Act.

An interim decision was issued on September 27, 2024. This decision should be read together with the interim decision.

### **Written Submissions**

The parties provided their written statement and proof that it was served on the other party as directed in the interim decision. I find the parties to be sufficiently served with each other's written statements. In making this decision, I have considered all of the evidence submitted by the parties.

### **Issues to be Decided**

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to retain the security deposit?

Are the parties entitled to recover their filing fees?

## Background and Evidence

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

The rental unit is a one-bedroom and den unit. This tenancy commenced on October 8, 2022 and ended on June 30, 2024. Rent was \$2,029.00 per month. The Tenants paid a security deposit of \$995.00.

The parties attended move-in and move-out inspections of the rental unit and completed the condition inspection report. The Landlord received the Tenants' forwarding address on June 30, 2024.

The Landlord seeks compensation as follows:

Item	Amount
Mattress and Couch Landfill Disposal	\$83.00
Replace Windowsill	\$169.12
Supplies	\$94.52
Cleaning (21 hours × \$35.00 per hour)	\$735.00
Painting (11 hours × \$35.00 per hour)	\$385.00
Wood Transition Strip	\$85.00
Missing Curtains	\$282.38
Garage Fob	\$40.96
Refrigerator Bin	\$82.43
Resin to Repair Second Bin	\$19.14
<b>Total</b>	<b>\$1,976.55</b>

The Landlord submits as follows:

- The bedroom windowsill, which is in close proximity to the bathroom, was damaged due to condensation on the window. This could have been avoided by opening the window, wiping the windowsill off, or turning on the bathroom fan. Those things were not done, and the windowsill was badly damaged. Failure to turn on the fan also caused corrosion of the bathroom door handle. The contractor confirmed that the windowsill rotted due to condensation. There was no water penetration from the exterior and no mould, dampness or rot on the inside of the wall. That would have led to a substantially higher repair cost.

- The Tenants' child drew and wrote on the walls, the floor, grout lines between the tiles, kitchen cabinet fronts, inside cabinets, and on doors using whiteout, pen pencil, and felt pen. There were paint splatters and ink stamps. Touch-up painting was not sufficient. The entire suite had to be painted. The Landlord is claiming a small fraction of the painting costs.
- The rental unit is approximately 720 to 750 square feet. The back of the appliances, fridge, countertops, floors, inside cabinets (with caked-on food), bathroom (with urine on the side of the vanity and on the floor) were not cleaned. The oven cleaning was missed at the start of the tenancy, so the Landlord agreed to clean the oven for the Tenants when they moved out, and did not include this in the cleaning charge.
- The apartment manager KP tracked his hours for painting and cleaning. The Landlord submitted receipts purchased for painting supplies.
- At the start of the tenancy, the living room and den curtains were the same. Panels in the den and four panels in the living room matched to the window sheers in both rooms. In pictures taken by the Tenants on June 21, 2024, the living room curtains were not present when the move-out inspection was done. The Tenants' den curtains were in poor condition and were not a suitable or acceptable replacement for the Landlord's coordinated curtains. The Landlord had to purchase replacement curtains for the living room and den.
- A refrigerator bin was cracked and had to be replaced. A second bin was repaired using resin. The Landlord did not include pre-existing damages such as the dent in the outside freezer drawer and the crack on the framework of the shelf.

The Tenants submit as follows:

- The Tenants agree with the charges for landfill, transition strip, and fob.
- The Tenants do not agree with the windowsill damage, which occurred due to the weather. The Tenants did use the washroom exhaust fan and kept it on for hours. The Tenants have taken care of all their apartments the same way, but only this one was damaged. The rental unit is in an old building that air leakage issues. The den sliding door was leaking air and had ice inside during the winter.
- The Tenants do not agree with the cleaning charges. The Tenants wiped the kitchen cabinets and floors. Some of the pictures were taken before the Tenants' brother/brother-in-law BR did further cleaning at the move-out inspection. The washroom was left cleaner than when it was received. The Landlord shared pictures of a few marks and writing, which were not all over the place so that the Landlord would need to redo the apartment. The Tenants agree that maybe there were some things to clean, which would be a 1 to 2-hour job, not 21 hours. The Tenants would be willing to pay 10% of the average quoted to deep clean an apartment of this size. The things that BR was unable to clean were reasonable wear and tear.
- The unit was not freshly painted when the Tenants moved in. Paint on the cabinets and in the washroom had already been chipped off. The Landlord put in

patches of paint when the Tenants moved in. The Tenants should not be expected to re-paint the unit. It was the Landlord's choice to paint.

- Pictures from the move-in inspection show existing issues: e.g. the walls had marks, the fridge bins were already broken, there was a dent on fridge, the oven was not cleaned, and there was residue on the windows that was not cleaned. The cracked refrigerator bin has tapes on them, which were put in before the Tenants moved in. The Tenants did not put any tapes on the fridge.
- The Tenants put new curtains in the den and put the den curtains living room. Both sets of curtains should be in the living room, one on each side. The Tenants had their own curtains removed from the den by BR. The Tenants offered to leave the curtains in the den too, but the Landlord did not want it.

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Is the Landlord entitled to compensation for damage to the rental unit?**

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

To determine whether compensation is due, the arbitrator may assess whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find the Tenants agree to the Landlord's charges for landfill, transition strip, and garage fob.

I will address the remainder of the Landlord's claims as follows: (a) windowsill, (b) painting and supplies, (c) cleaning, (c) curtains, and (d) refrigerator bins.

### ***(a) Windowsill***

Under section 32(3) of the Act, 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. A tenant is not required to make repairs for reasonable wear and tear: section 32(4) of the Act.

Based on the evidence presented, I find the bedroom windowsill appears to have been badly damaged during the tenancy due to condensation. I accept that condensation on the window may have been related to the age of the building and/or moisture levels inside the rental unit.

According to Residential Tenancy Policy Guideline 1, the tenant is responsible for cleaning the inside windows and tracks during and at the end of the tenancy.

I find there is insufficient evidence that the condensation was caused by the Tenants not adequately using the bathroom fan. However, I find that if the Tenants had regularly cleaned the window and tracks to remove condensation, then the windowsill would likely not have been so badly damaged. Therefore, I find the Tenants are liable to reimburse the Landlord 50% of the windowsill repair cost, or  $50\% \times \$131.25 = \$65.62$ .

### ***(b) Painting and Supplies***

I find there were some markings on certain areas of the walls and kitchen cabinets, including pencil, pen, felt pen, paint splatters, and ink stamping. I find these markings appear to be relatively small.

According to Residential Tenancy Policy Guideline 1, the landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant may be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

I find there is insufficient evidence as to when the rental unit was last painted. Residential Tenancy Policy Guideline 40 provides that interior paint has an estimated useful life of 4 years.

Based on the photos submitted, I find the markings and stains are likely to be removable through cleaning and spot treatment (discussed below). I do not find the photos to show that the markings caused damage to the drywall. As such, I do not find the Landlord to have demonstrated that painting was necessary to remediate the markings. I dismiss the Landlord's claim for the cost of painting and supplies without leave to re-apply.

### **(c) Cleaning**

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the rental unit was not left reasonably clean. I find that in addition to the markings noted on the walls and cabinets, there were also markings on the floor and on the kitchen backsplash. I find the Landlord is entitled to 4 hours of cleaning at \$35.00 per hour to remove the markings through washing and performing spot treatment.

I find rental unit was in need of cleaning in other areas to be considered reasonably clean. I find the inside of the fridge, kitchen cabinet shelves, and drawers had some minor stains and debris. I find the baseboards, bathroom floor, bathroom vanity, cabinet handles, and stove knobs needed to be wiped down. Considering the size of the unit, I find an additional 2 hours of general cleaning at \$35.00 per hour would be adequate to bring the unit to a standard of reasonable cleanliness. I accept the Landlord may require further deep cleaning in order to consider the unit move-in ready for the next tenant. However, the standard of reasonable cleanliness required of a tenant under the Act is less than perfectly or thoroughly clean.

For the reasons given above, I find the Tenants are responsible to reimburse the Landlord for 4 hours of cleaning to remove markings and spot cleaning, as well as 2 hours of general cleaning at \$35.00 per hour, or  $(2 + 4 \text{ hours}) \times \$35.00 \text{ per hour} = \$210.00$ .

### **(d) Curtains**

I find the Landlord's evidence was consistent in that four panels of the curtains were missing by the end of the tenancy. I find that in contrast, the Tenants were uncertain whether BR had removed the Tenants' curtains or possibly the Landlord's curtains by mistake. I find the Tenants' photos show that their curtains were left in the den. I find the Tenants did not clarify this issue with BR or address it in their written submissions. Therefore, I find that more likely than not, the Landlord was missing four panels as alleged. I accept the Landlord purchased six panels to replace all curtains in the unit so that they matched. However, as I find the Landlord to have been missing only the living room curtains, I find the Tenants are only liable to reimburse the Landlord for the four missing panels, or  $\$282.38 \times 4/6 \text{ panels} = \$188.25$ .

### **(e) Refrigerator Bins**

I find the move-in pictures emailed to the Tenants on October 14, 2022 identify three imperfections inside the fridge, none of which were related to the cracked bins. I find the pictures to show that the fridge was otherwise in fine condition. I find the parties did not agree as to the condition of the fridge at the end of the tenancy on the inspection report. I find the Landlord's photos show a fridge bin that was cracked and covered with tape,

as well as a second bin that had a crack. I do not find these damages to have been identified in or can be seen from the move-in photos. I find that more likely than not, the damages occurred sometime during the tenancy due to the Tenant's use of the fridge. I accept the Landlord purchased a bin to replace the more damaged one and purchased resin to repair the other damage. I find the Tenants are liable to reimburse the Landlord for these costs.

### **Is the Landlord entitled to retain the security deposit?**

I find the parties completed move-in and move-out inspections with a condition inspection report. I find the Tenants provided the Landlord with their forwarding address in writing less than one year after the tenancy end date. Therefore, I do not find either of the parties to have extinguished their rights to the security deposit under the Act.

Under section 38(1) of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
- the date the landlord receives the tenant's forwarding address in writing,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find the Landlord made their application on July 14, 2024, within 15 days after receiving the Tenants' forwarding address. As such, I find the Landlord complied with section 38(1) of the Act, and the doubling provision in section 38(6) of the Act does not apply.

I have found above that the Landlord is entitled to compensation that is less than the security deposit held. Since the Tenants have not extinguished their rights to the deposit, I find the Tenants are entitled to the return of the balance.

### **Are the parties entitled to recover their filing fees?**

Both parties had partial success in their applications. I find the parties are entitled to the recovery of their filing fees under section 72(1) of the Act.

### **Conclusion**

The Landlord's claims for compensation and recovery of the filing fee are partially granted in the amount of **\$874.40**. Pursuant to section 38(4) of the Act, the Landlord is authorized to retain this amount from the security deposit. The remaining amounts sought by the Landlord are dismissed without leave to re-apply.

The Tenants are entitled to the return of the balance of the security deposit with interest and the recovery of the filing fee. Pursuant to sections 38, 67, and 72 of the Act, I grant the Tenants a Monetary Order of **\$213.26**, calculated as follows:

Item	Amount
<b>Amount Payable by Landlord to Tenants</b>	
Credit for Security Deposit Held by Landlord	\$955.00
Interest on Security Deposit	\$32.66
Tenants' Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$1,087.66</b>
<b>Less Amounts Payable by Tenants to Landlord</b>	
Mattress and Couch Landfill Disposal	- \$83.00
Replace Windowsill (50% × \$131.25)	- \$65.62
Cleaning (6 hours × \$35.00 per hour)	- \$210.00
Wood Transition Strip	- \$85.00
Replacement Curtains (\$282.38 × 4/6 panels)	- \$188.25
Garage Fob	- \$40.96
Refrigerator Bin	- \$82.43
Resin to Repair Second Bin	- \$19.14
Landlord's Filing Fee	- \$100.00
<b>Subtotal</b>	<b>- \$874.40</b>
<b>Net Payable by Landlord to Tenants</b>	<b>\$213.26</b>

This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, 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: November 3, 2024

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Residential Tenancy Branch