Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (Application) 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; and
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

This Application also dealt with the Tenant's Application under the Act for:

- the return of their security deposit; and
- recovery of the filing fee.

Landlord Z.A. and their assistant M.H. attended the hearing for the Landlord.

Tenant S.S. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The parties acknowledged service of the Proceeding Packages and the documentary evidence before me from one another. No service concerns were raised. As a result, I found the Proceeding Packages and evidence duly served for the purposes of the Act, and the hearing proceeded as scheduled.

Issues to be Decided

Is the Landlord entitled to compensation for damage to the rental unit or common areas?

Is the Landlord entitled to retain any portion of the Tenant's security deposit? If not, is the Tenant entitled to the return of any portion or double its amount?

Are the parties entitled to recover their respective filing fees?

Background and Evidence

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

Evidence was provided showing that this tenancy began on September 1, 2023, with a monthly rent of $3,510.00, due on the first day of the month. A $1,755.00 security deposit was also required. At the hearing, the parties agreed that the security deposit was paid on June 2, 2023, the entirety of which the Landlord still holds in trust.

The parties agreed that condition inspections and reports were completed at the start and the end of the tenancy as required. No concerns about compliance with the Act or regulations were raised about inspections or reports. The parties agreed that the tenancy ended on July 30, 2024. They also agreed that the move out condition inspection was completed on that date and that the Tenant provided a forwarding address in wring on the condition inspection report.

The Landlord and their assistant stated that while the Tenant had cleaned some areas of the rental unit, other areas, such as the balcony, were unclean. They stated that the Tenant also did not have the rental unit professionally cleaned as required by their agreement, and characterized the state of the rental unit as “not liveable.” The Landlord stated that although they were permitted to charge the Tenant $450.00 for professional cleaning as set out in the addendum to the tenancy agreement (addendum), they are only seeking recovery of the $240.00 they paid to have it cleaned.

The Tenant denied leaving the rental unit dirty. They stated that the only thing that was not cleaned was the balcony, which by law they did not have to clean. They stated that they were very patient with the Landlord at the start of the tenancy agreement, when the rental unit was not clean. Although the Tenant agreed to signing the addendum, they argued that the Landlord cannot contract out of the Act by requiring them to have the rental unit professionally cleaned. They also stated that the photos submitted by the Landlord were taken before the tenancy ended, and before their own cleaner came.

The Landlord and their assistant stated that the Tenant:

- caused damage to the exterior cabinetry of the built-in fridge by scratching it;
- broke the fridge door spring by leaning on the door or putting too many heavy objects in the door shelves; and
- damaged the fridge gasket.

As a result, they sought $315.00 in anticipated costs for repairs to the damaged fridge exterior, recovery of the $187.95 paid for the assessment of the fridge gasket and spring, $782.24 in anticipated repair costs for the fridge spring and $$229.95 in anticipated costs to replace the fridge gasket.

The Tenant denied damaging the fridge door spring or gasket and argued that the Landlord's own evidence shows that these things simply occur over time. While they acknowledged scratching the exterior with a ring, they argued that the Landlord is grossly over exaggerating the damage caused, which they believe qualifies as wear and tear.

While the parties agreed that the Tenatn broke a plastic garbage can in the bathroom, they disagreed on its value. The Tenatn argued that it was cheap plastic and worth only a few dollars at the dollar store. The Landlord disagreed, stating that it cost them $30.00 to replace, as they are not required to buy things at the dollar store.

Finally, the parties disagreed about whether the Tenant was responsible for damaging the walls and cabinetry in one corner of the kitchen. The landlord stated that by using and air fryer in that location, they had caused significant damage to the wall, the marble backsplash, and the cabinetry above the counter. They stated that this damage can clearly be seen in their photographs and is noted in the move-out condition inspection report. The submitted a quote for repairs to these areas in the amount of $735.00.

While the Tenant's arguments with regards to the alleged damage from the air fryer were somewhat convoluted and nebulose, often referred to irrelevant and unrelated things such as their employment, I believe their argument to be that because the air fryer was rented as part of the rental unit, they should not be responsible for the damage it caused.

The parties both submitted documentary evidence in support of their positions such as the condition inspection reports, the tenancy agreement and addendum, photographs, videos, copies of correspondence, invoices, and quotes.

Analysis

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

Is the Landlord entitled to compensation for damage to the rental unit or common areas?

Section 32(2) of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

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

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

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

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.

Although the Tenant argued that they were not legally required to clean the balcony, I disagree. They provided no basis for having come to this conclusion, pointed to no section of the Act, regulations, or Residential Tenancy Policy Guidelines (Guidelines) stating this, and submitted nothing to corroborate their belief in this regard. The rental unit is an apartment with its own private balcony. As such, I find that the balcony clearly forms part of the unit rented to the Tenant under the tenancy agreement for their exclusive use and possession. Even if this were not the case, it would nevertheless constitute “other residential property to which the tenant has access.”

Further to this, Guideline 1 states that tenants are responsible for cleaning the inside and outside of balcony doors and windows, as well as balcony window and door tracks during and at the end of the tenancy. As a result, I find that they were required to clean it both throughout the tenancy, and at its end in accordance with sections 32(2) and 37(2) of the Act and Guideline 1.

Based on the photographs from the Landlord, the move-out condition inspection report, and the Tenant’s own admission at the hearing that they did not clean the balcony, I find that they breached sections 32(3) and 27(2)(a) of the Act by failing to clean the balcony.

Although the Landlord sought $240.00 in total for cleaning of both the balcony and the rental unit, the cleaning invoice does not set out what exactly was cleaned, for how long, and at what rate. As a result, I do not know exactly what portion of this invoice reflects the balcony cleaning. However, the cleaner’s rate appears to be $40.00 per hour, plus GST, and I think its reasonable to assume given the pictures of the balcony, that it took at least one hour to clean. As a result, I grant the Landlord recovery of $42.00 for balcony cleaning.

Although the Landlord also alleged that other areas of the rental unit were unclean, this is not supported by their documentary evidence and was contested by the Tenant. They also argued that the Tenant was required to have the rental unit professionally cleaned.

However, as set out above, section 37(2)(a) of the Act sets out the standard of repair and cleanliness required at the end of the tenancy, and does not require professional cleaning. Under section 5 of the Act, landlords and tenants also may not contract out of the Act, and any attempt to do so is of no affect.

Based on the above, I find the Landlord's requirement that the rental unit be professionally cleaned at the end of the tenancy amounts to an attempt to contract out of section 37(2)(a) of the Act, which is impermissible. I therefore find that this term of the addendum is unenforceable and dismiss the Landlord's claims for the remaining $198.00 in professional cleaning costs without leave to reapply.

While the parties agreed that the Tenant broke a small plastic garbage can, the Landlord appears to me to have bought a garbage can that looks markedly different in terms of quality and esthetics than the one replaced. They also submitted no evidence of the value or age of the original garbage can. As a result, I am not satisfied that the Landlord acted reasonably to mitigate their loss by replacing it with a $30.00 garbage can. However, I am nevertheless satisfied that the Tenant damaged this item and failed to replace it, thereby breaching section 37(2)(a) of the Act. As a result, I grant the Landlord $1.00 in nominal damages pursuant to section C of Guideline 16.

Although the Landlord argued that the Tenant's misuse of the fridge caused damage to the fridge door spring and gasket, they acknowledged that the fridge was installed in 2017. As a result, I find that it was around 1/3 of the way through its useful life of 15 years, as set out in Guideline 40, at the time the tenancy ended. Further to this, the Landlord's own evidence from EasyFix Appliance Repair states under diagnostics, that hinges on built-in refrigerators are known to wear out over time. As a result, I am satisfied that the wearing out of these parts over time is normal. While the diagnostic also states that this wear and tear can be exacerbated due to more forceful and aggressive opening and the number of things put on the door shelves, it does not state that it is the opinion of that technician that this occurred in this case.

As a result, I find the Landlord's argument that the Tenant's use of the fridge caused this damage speculative in nature. Based on the statements from EasyFix Appliance Repair and the age of the fridge, I find it just as likely that the wearing out of the spring and gasket are the result of natural aging. As a result, and as tenants are not responsible for the costs of repairing reasonable wear and tear, I therefore dismiss the Landlord's claims in relation to the fridge hinge and gasket without leave to reapply.

Although the Tenant attempted to downplay the scratch they caused to the built-in fridge, and claimed that this constitutes reasonable wear and tear, they nevertheless acknowledged scratching it with their ring. I therefore disagree with their characterization of the scratch as reasonable wear and tear, as it was not the result of natural deterioration due to ageing and natural forces. It was the result of damage caused by the Tenant. Given the built-in nature of the fridge, and the fact that the cabinetry the fridge is built into matches the rest of the kitchen cabinetry, I also find it is more noticeable and more difficult to repair. Although the Tenant disagrees with the

amount sought, I am satisfied by the quote submitted from the Landlord that it will cost $315.00 to repair the scratch. I therefore grant them recovery of this amount.

I also grant recovery of the $735.00 sought to repair damage caused to the wall and kitchen cabinetry from the Tenant's use of an air fryer. While they Tenant argued they should not be responsible for this damage, I disagree. While the air fryer may have been provided as part of the furnished rental, the Tenant was not permitted to operate it in such a manner that it would cause damage to the property. As this is the amount shown in the Landlord's quote, and I find this amount reasonable given the multiple areas that must be repaired, I therefore grant them recovery of this amount.

In total, I find that the Landlord is owed $1,093.00 for cleaning and repairs.

Is the Landlord entitled to retain any portion of the Tenant's security deposit? If not, is the Tenant entitled to the return of any portion or double its amount?

The parties agreed that condition inspections and reports were properly completed at the start and the end of the tenancy, and neither party made arguments that the other had extinguished their rights to the security deposit under sections 24 or 36 of the Act. As a result, I find that they did not.

The Landlord filed their claims against the Tenant's security deposit with the Branch on August 10, 2024. As the parties agreed that the tenancy ended on July 30, 2024, and that the Tenant provided their forwarding address in writing on the move-out condition inspection report that same day, I accept this as fact. As a result, I find that the Landlord complied with section 38(1) of the Act. The doubling provision set out under section 38(6) of the Act therefore does not apply, and the Landlord was entitled to withhold the security deposit pending the outcome of their Application.

Section 72(2)(b) of the Act states that if the director orders a tenant to pay any amount to a landlord, the amount may be deducted from the security deposit. As set out above, I have already found that the Tenant owes the Landlord $1,093.00 for cleaning and repairs. I therefore authorize the Landlord to retain this amount from the $1,817.68 currently held in trust as a security deposit. This amount includes the $1,755.00 originally paid on June 2, 2023, plus $62.68 in accrued interest.

The Landlord is ordered to return the remaining balance of $624.68 to the Tenant, and the Tenant is granted a Monetary Order in that amount.

Are the parties entitled to recover their respective filing fees?

As recovery of the filing fee under section 72(1) of the Act is discretionary, and both parties were only partially successful in their claims against one another, I decline to grant either party recovery of their filing fee.

Conclusion

The Landlord may retain the $1,093.00 from the security deposit currently held in trust, in recovery of the money owed to them by the Tenant.

I Order the Landlord to return the $624.60 remaining balance of the security deposit to the Tenant. Pursuant to section 67 of the Act, the Tenant is 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, it 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.

All other claims and amounts are dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: November 21, 2024

Residential Tenancy Branch