DECISION

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

The Landlord files his own application seeking the following relief under the *Act*:

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

J.D. attended as the Tenant. B.K. attended as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Application and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Landlord entitled to compensation due to damage to the rental unit caused by the Tenant or their guest?
2) Is the Landlord entitled to compensation due to loss caused by the Tenant's breach of the *Act*, Regulations, or the tenancy agreement?

3) Is the Landlord entitled to retain all or a portion of the security deposit or is the Tenant entitled to its return?
4) Is either side entitled to their filing fee?

Evidence and Analysis

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

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on March 31, 2020.
- The Tenant moved out of the rental unit on June 29, 2024.
- A security deposit of $750.00 was paid by the Tenant.

I have been given a copy of the written tenancy agreement. It notes that rent of $1,500.00 was due on the first day of each month. The Landlord asserts that this is the amount of rent the Tenant had been paying throughout the tenancy. The Tenant disputes this, saying he had rent increases of $100.00 imposed by the Landlord in January 2022, January 2023, and January 2024 such that rent at the end of the tenancy was due in the amount of $1,800.00 each month.

Legal Test for the Monetary Claims

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of the *Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Is the Landlord entitled to compensation due to damage to the rental unit caused by the Tenant or their guest?

Section 37(2) of the *Act* imposes an obligation on tenants at the end of the tenancy to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Submissions

The Landlord indicates that the Tenant left damage to walls in two of the rooms for the rental unit which required repainting at a cost of $840.00. The Landlord confirms the rental unit was last painted in 2018 when the residential property was newly built.

I have been provided with an invoice dated July 15, 2024 for the costs of repainting the rental unit, as well as two photographs for the areas of the rental unit alleged to have been damaged by the Tenant.

The Tenant denies damaging the walls. The Tenant says that the damage pre-existed the tenancy as someone else resided there before he did.

The Landlord also seeks the cost of repairing the clothes dryer, saying that a sensor had to be replaced. The Landlord claims this against the Tenant saying he paid $200.00 to a friend for its repair.

The Landlord and Tenant confirm no written move-in or move-out condition inspection report was prepared.

Findings

I find it worth emphasizing that a tenant is not responsible for damage that is the result of reasonable wear and tear, both under s. 37(2) of the *Act* as well as s. 32(4) of the *Act*. This means that some damage is to be expected through normal use during a tenancy and that not all this damage can be claimed against a tenant.

I note I have been provided scant evidence from the Landlord to support his claim. There is no evidence as to the state of the rental unit at the outset of the tenancy in the form of a move-in condition inspection report. To be clear, the Landlord was required to prepare the move-in condition inspection report as per s. 23(4) of the *Act*.

With respect to the wall damage, I find that there is insufficient evidence to support that the Tenant damaged the walls in question as it is just as likely that the damage pre-

existed the tenancy since I have no move-in condition inspection report. Though I accept the Landlord incurred the cost of repainting the rental unit, the Landlord has failed to show the Tenant, or his guest, caused the damage in breach of ss. 32 or 37 of the *Act*. Accordingly, this aspect of the Landlord's claim is dismissed without leave to reapply.

Looking to the clothes dryer claim, the Landlord cannot claim for this if he cannot also establish that the Tenant caused the damage such that it exceeds reasonable wear and tear. Parts on appliances wear out through normal use, the cost for their replacement are not attributable to a tenant given s. 32(4) and 37(2) of the *Act*.

I find that the Landlord has failed to establish the Tenant damaged the dryer. It is just as likely the part broke through normal use such that it constitutes reasonable wear and tear. Accordingly, this portion of the Landlord's claim is dismissed without leave to reapply.

2) Is the Landlord entitled to compensation due to loss caused by the Tenant's breach of the Act, Regulations, or the tenancy agreement?

The Landlord seeks unpaid rent for June 2024. The Landlord also seeks compensation for lost rental income for July 2024 since he could not rent out the rental unit due to the damage caused by the Tenant he needed to repair.

The Tenant indicates he paid rent in full for June 2024.

The Landlord, as the claimant, bears the onus of proving his claim. I find that he has failed to do so here. I have been provided with no documentary evidence to support his allegation that rent for June 2024 had not been paid. Indeed, given what the Tenant has said it is just as likely that rent has been paid. I further note that I would not grant the Landlord compensation for lost rental income for July 2024 since the alleged damage is not attributable to the Tenant, as is explained above.

Accordingly, I dismiss this portion of the Landlord's claim, without leave to reapply.

3) Is the Landlord entitled to retain all or a portion of the security deposit or is the Tenant entitled to its return?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

The Landlord asserts that the Tenant did not provide his forwarding address. The Tenant disputes this, saying that he address is noted in the Landlord's application, which was filed on August 20, 2024, such that the Landlord must have received his forwarding address.

I asked the Tenant how and when he told the Landlord his forwarding address. The Tenant says he must have told him in a conversation of his new address. I note that the Tenant's evidence contains a text message whereby he requests his security deposit by e-transfer sent to an email address.

To be clear, the Tenant is required to provide his forwarding address in writing. I find that he has not done so here as he has otherwise failed to demonstrate how and when he gave it in writing to the Landlord. I find that the doubling provision under s. 38(6) of the *Act* has not been triggered.

Since the Landlord has retained the security deposit to date and his claims against it were dismissed, I order that it be returned to the Tenant. The total to be returned to the Tenant is $782.12, which includes applicable interest of $32.12 as per s. 38(1)(c) of the *Act* and s. 4 of the Regulations ($750.00 + $32.12).

I have calculated interest by use of the Residential Tenancy Branch's deposit interest calculator for the entire period the security deposit has been held in trust by the Landlord, being from April 1, 2020 as noted in the tenancy agreement to the date of this decision.

4) Is either side entitled to their filing fee?

As the Landlord was unsuccessful, I find he is not entitled to his filing fee. His claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

I find the Tenant was successful on his application, such that he is entitled to his filing fee. I order under s. 72(1) of the *Act* that the Landlord pay the Tenant's $100.00 filing fee.

Conclusion

I dismiss the Landlord's application, in its entirety, without leave to reapply.

I order that the Landlord return the Tenant's security deposit, plus interest, in the amount of $782.12.

I order that the Landlord pay the Tenant's $100.00 filing fee.

In total, I order under ss. 67 and 72 of the *Act* that the Landlord pay **$882.12** to the Tenant ($782.12 + $100.00).

It is the Tenant's obligation to serve the monetary order on the Landlord. Should the Landlord fail to comply with the monetary order, it may be enforced by the Tenant at the BC Provincial 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 4, 2024

Residential Tenancy Branch