



## **DECISION**

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Landlords' application for:

- a Monetary Order of \$609.32 for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order of \$24.46 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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

And the Tenants' application for:

- Return of security deposit and pet damage deposit that the Landlord is retaining without cause
- Reimbursement of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters**

At the outset of the hearing the Landlord provided their full legal name as listed on the Tenancy Agreement (TA). The Landlord testified that they erred by naming the other landlord as the Landlord on their application for dispute resolution. The Tenant's application correctly named the Landlord as per the TA.

Based on the testimony of the Landlord, the TA, the application filed by the Tenant and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.12, I amended the Landlord's application to include the correct name of the Landlord.

I find that the Tenant was served on September 15, 2024, by registered mail in accordance with section 89(1) and 90 of the Act, the fifth day after the registered

mailing. The Landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm this service. Registered mail tracking information submitted supports the Tenants were served and signed for the mailed package.

I find the Landlord's amended application was not served to the Tenant in accordance with the Act, and they are seeking the cost of registered mail fees when there is no remedy under the Act for this item. As such, I will not proceed on the following issue that was added by the Landlord:

- a Monetary Order of \$24.46 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act

The above claim is dismissed without leave to reapply.

The Landlord testified that they received documentary evidence from the Tenant, however, they were not served with the Proceeding Package from the Tenant. The Tenant testified that they served via email the Proceeding Package to the Landlord.

Service via email is not permitted under the Act without a Form 51 or sub-service order, neither of which the Tenant presented. As such, I find the Tenant's application was not served in accordance with the Act.

The Tenant's application is dismissed without leave to reapply, as I will address their claim for the return of their security deposit and pet damage deposit as part of the Landlord's application that is before me. Further, I will consider the evidence submitted by the Tenant for the matter that is properly before me.

### **Issue(s) to be Decided**

Is the Landlords entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit in satisfaction of the Monetary Order requested under section 38 of the Act?

Is the Landlord entitled to recover the filing fee for this application from the Tenant under section 72 of the Act?

### **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 agreed that this tenancy began on November 1, 2021. The monthly rent of \$2,395.00 was due on the first day of each month. On October 26, 2021, the Tenant paid a security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00, which the Landlord continues to hold in trust. In this decision I will refer to the security deposit and pet damage deposit as combined deposits of \$2,250.00.

Tenant SK1 testified that the tenancy ended on July 31, 2024, and they moved out of the rental unit on that date. The Landlord testified that the Tenant was still removing belongings on July 31, 2024, and they returned keys to them and ended the tenancy on August 1, 2024.

The Landlord testified that the parties completed a walk through of the rental unit at the start of tenancy, however, no move in Condition Inspection Report (CIR) was completed. SK1 testified that there was no move in walk through or CIR. Both parties agreed that they did not complete a move out CIR. Both parties agreed that on August 23, 2024, the Tenant provided their forwarding address in writing to the Landlord.

The Landlord testified that the rental unit was a fully furnished condominium, which included furniture for the living room, kitchenware and a bedroom set. The Landlord testified that they purchased new furniture one year prior to the start of this tenancy. The Landlord testified that the previous tenant of the rental unit took good care of the furniture over their one year tenancy, and there was minimal wear and tear to the items. The Landlord submitted before and after photographs as part of their documentary evidence.

The Landlord is seeking a monetary order of \$609.32 as follows:

Item 1 - \$427.84, for replacement of a damaged couch. The Landlord testified that the couch was in decent condition at the start of the tenancy, and considerably damaged at the end of the tenancy. The Landlord testified that at the end of the tenancy the couch was full of pet hair and stains, and was dirty. The Landlord admitted that there was a minor tear, however, stated the couch was still in decent condition. The Landlord stated that after this three year tenancy, the couch is useless, as the Tenant's did not maintain or clean the couch.

Item 2 - \$79.00, for replacement of a damaged white chair. The Landlord testified that the backing of the chair was broken, and the chair had pet hair and stains.

Item 3 - \$102.48, for replacement of a damaged bar stool. The Landlord testified the bar stool was in good condition at the start of the tenancy, and broken by the end of the tenancy.

The Landlord testified that they attempted to clean the items, however, they were beyond cleaning and repairs. The Landlord testified that they do not have original receipts for the items noted above. The Landlord stated that they are seeking partial reimbursement (50%) of the original cost for replacement of all three items. The

Landlord testified that their calculation includes the 50% reduction. The Landlord submitted before and after photographs as part of their documentary evidence.

SK1 stated that they disagree with the Landlord's claim, as the items were damaged and broken and stained at the start of the tenancy. SK1 stated that on November 1, 2024, they took photographs of these items and messaged the Landlord, and for them to remove the items as they were damaged. SK1 testified that the Landlord failed to remove the items. The Tenant submitted text message communication and photographs as part of their documentary evidence.

The Landlord stated that the Tenant did not message them regarding the three items they claimed for, but instead they are referring to other items, such as a dresser and the closet, and they did not claim replacement costs for those additional items.

The Landlord testified that they did not remove the items at the start of the tenancy as they were in good condition.

## **Analysis**

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

### **Is the Landlords entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?**

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has failed to establish their claim for compensation for damage or loss under the Act, regulation or tenancy agreement.

With the absence of a move in CIR and move out CIR, I rely on the testimony of the parties and the documentary evidence of before and after photographs. In this case, I find the items were damaged at the start of the tenancy, and then had additional wear and tear over the three year tenancy. I find the Tenant communicated to the Landlord

their concerns of damaged and stained furniture at the start of the tenancy. I find the Landlord failed to prove that further damage or loss occurred due to the actions or neglect of the Tenant. Further, without original receipts or proof of replacement costs, I find the Landlord did not prove the amount or value of the loss as required by the Act.

Lastly, I find the Tenant brought the issue to the attention of the Landlord, and at that time the Landlord acknowledged the damage. I find the Landlord did not minimize their loss when they failed to check, address and possibly remove the damaged items.

For the reasons noted above, I dismiss the Landlord's application without leave to reapply.

**Is the Landlord entitled to recover the filing fee for this application from the Tenant under section 72 of the Act?**

As the Landlord's application was not successful, the Landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit in satisfaction of the Monetary Order requested under section 38 of the Act?**

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 forwarding address was provided on August 23, 2024, and the Landlord made their application on September 5, 2024, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

The combined deposits of \$2,250.00 have accrued \$99.27 in interest. The Landlord is holding combined deposits in the total amount of \$2,349.27.

As I did not grant a monetary award to the Landlord, I order the return of the combined deposits in the amount of \$2,349.27 to the Tenant. Further, I grant the Tenant the \$100.00 filing fee paid for their application under section 72 of the Act.

I grant the Tenant a monetary order in the total amount of \$2,449.27.

**Conclusion**

I grant the Tenant a monetary order in the amount of \$2,449.27 as noted above.

The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** to be enforceable. Should the Landlord fail to comply with this

Order, this Order may be filed in the Provincial Court of British Columbia (Small Claims 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: November 22, 2024

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Residential Tenancy Branch