

## **DECISION**

### **Introduction**

This reconvened 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 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; and
- Authorization to recover the filing fee for this Application from the Tenants under section 72 of the Act.

A previous hearing took place on November 1, 2024, which was adjourned due to time constraints and to allow the Tenants a further opportunity to serve their evidence in response to the Application to the Landlord.

The Tenants submitted an application against the Landlord which was crossed to be heard at the same time as the Landlord's Application, though was dismissed with leave to reapply, per the interim decision dated November 1, 2024 (the Interim Decision). As such, only the Landlord's Application will be addressed in this Decision. This Decision should be read in conjunction with the Interim Decision.

This reconvened hearing, and the previous hearing, were attended by an Agent for the Landlord and both Tenants listed under the tenancy agreement though only Tenant AA was listed on the Landlord's Application as a respondent. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Service of Evidence**

Service was addressed in the Interim Decision. Per the Interim Decision, I found the Tenants failed to establish their evidence in response to the Landlord's Application was served in accordance with the Act. The Tenants were allowed additional time to serve their evidence to the Landlord ahead of the reconvened hearing and were authorized to do so by email if they wished.

The Tenants testified they had not served their evidence to the Landlord since the reconvened hearing. Given this, I excluded the Tenant's evidence from consideration on the grounds of procedural fairness, since the Landlord did not have the opportunity to review it and the Tenants did not serve the Landlord in accordance with the Act.

## **Preliminary Issue – Amendment**

Section 64(3)(c) of the Act permits me to amend an Application for Dispute Resolution subject to the Residential Tenancy Branch Rules of Procedure.

Rule 7.12 of the *Rules of Procedure* permits me to amend an Application for Dispute Resolution at the hearing when the amendment can be reasonably anticipated by the respondent.

The Landlord claimed compensation for cleaning as part of their claim for damage to the rental unit. Strictly speaking, a claim for cleaning is not considered damage to the rental unit. I therefore amend the Application under section 64(3)(c) of the Act to include a request for a Monetary Order for compensation for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, which would encompass cleaning costs.

The claim for cleaning is clearly outlined in the Application. I also find the Tenants were very much aware the Landlord's claim included cleaning costs. As such, I find this amendment does not unfairly prejudice the Tenants.

## **Issues to be Decided**

- Is the Landlord entitled to a Monetary Order for the requested compensation?
- Is the Landlord entitled to retain all or part of the Tenants' security deposit?
- Is the Landlord entitled to recover the cost of the filing fee for their Application from the Tenants?

## **Background and Evidence**

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on March 15, 2021 for a fixed term ending March 31, 2022 and continuing on a month-to-month basis after that.
- The Tenants vacated the rental unit on August 1, 2024.
- Rent was initially \$1,450.00 per month due on the first day of the month, and through annual increases was \$1,501.19 per month when the tenancy ended.
- A security deposit of \$725.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenants' provided their forwarding address in writing at some point within two weeks of the tenancy ending, though the precise date was not known by either party, though the Landlord's Agent acknowledged receipt on August 7, 2024.

### *The Landlord's claim*

There was heavy staining on the carpet at the end of the tenancy which required professional cleaning. The Landlord does not have an invoice or receipt for costs incurred and seeks to recover \$220.00 for cleaning the carpets of the two-bedroom units.

The rental unit as a whole was not properly cleaned at the end of the tenancy, with marks on the wall and food and grease left in the kitchen. As a result, further cleaning was required. The cleaning was done in-house and the Landlord seeks to recover of a flat fee of \$350.00. The parties previously agreed the Tenants would have the rental unit professionally cleaned by April 1, 2024, per a settlement agreement reached under a previous application.

The Landlord seeks to recover \$150.00 for parts and labour for the replacement of a vanity cabinet door and a bedroom door. Per the Landlord's Agent, the age of the bathroom fixtures is not known, but it was acknowledged it is an older rental unit.

The Landlord also claims \$200.00 for the disposal of a mattress and a cabinet left behind in the rental unit by the Tenants.

The Landlord did not provide receipts or invoices to support the amounts sought, rather the Landlord applies flat fees for the above-mentioned services and work. Photographs of the rental unit taken at the start and end of the tenancy were provided as evidence by the Landlord, as well as a condition inspection report.

It was acknowledged by the Landlord's Agent that a report was prepared at the start of the tenancy, though it has since been lost or destroyed and a copy was not retained by the Landlord. As a result, the report only lists the end of tenancy condition of the rental unit.

The end of tenancy condition inspection report was prepared in the absence of the Tenants. Per the Landlord's Agent, the parties agreed to meet at the rental unit on August 1, 2024 to conduct the inspection, but the Tenants barricaded themselves in the rental unit, the situation escalated and the police were called. The report was therefore completed in the absence of the Tenants and a copy was later provided to them by email.

The Landlord's claim is summarized as follows:

| Item            | Amount          |
|-----------------|-----------------|
| Carpet cleaning | \$220.00        |
| Suite cleaning  | \$350.00        |
| Repairs         | \$150.00        |
| Disposal costs  | \$200.00        |
| <b>Total</b>    | <b>\$920.00</b> |

#### *The Tenant's response*

The rental unit was dirty at the start of the tenancy, though they washed the carpet and provided the receipt to the Landlord. Per the Tenants, they paid \$200.00 for cleaning on April 2, 2024 and returned the rental unit in a clean state to the Landlord at the end of the tenancy.

It was acknowledged the photographs of the rental unit taken at the beginning and end of the tenancy provided by the Landlord were accurate representations of the condition of the rental unit, in the Tenants' view.

Per the Tenants, there was nothing broken in the rental unit when they vacated and whilst the door of the bathroom cabinet came off, this happened on its own.

The mattress was already in the rental unit at the start of the tenancy, though the cabinet was theirs and they forgot to take this with them.

On the day of the end of tenancy inspection, an Agent for the Landlord attended. There had been a previous interaction between the Agent and the Tenants' children which the Tenants took exception to and had asked the Landlord to send anyone else but that

Agent. When the Agent arrived to carry out the inspection, they refused to let them in and called the police. The Tenants acknowledged getting a copy of the end of tenancy condition inspection report from the Landlord but disagreed with the contents.

## **Analysis**

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Section 7 of the Act provides the basis of claims for compensation relating to breaches of the Act or a tenancy agreement. Section 7(1) states that if a landlord or tenant does not comply with the Act, the Regulation, or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 7(2) of the Act also requires the claiming party to take reasonable steps to minimize their loss.

In order to be successful in their claim, the Landlord must prove on a balance of probabilities that the Tenants breached the Act, Regulation, or tenancy agreement, that this breach caused the Tenants to incur a loss, and that they took reasonable steps to mitigate this loss.

As set out in Policy Guideline 16 - *Compensation for Damage or Loss*, A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Also, 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. I will address each of the Landlord's claims in turn.

### *Cleaning costs*

Section 37 of the Act sets out that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean.

Whilst the condition inspection report provided records frequent mention of cleaning being required and the presence of dirt and crumbs, as this report was prepared in the absence of the Tenants who also disputed the contents, I give the report little weight. I do give the photographic evidence of the Landlord significant weight since the Tenants verified the photos were accurate.

From reviewing the photographic evidence, I note there were a few marks on the carpet at the end of the tenancy, though there was also one large stain before the tenancy began. Whilst the Tenants testified they had the carpet professionally cleaned, I find this was on April 2, 2024, per their testimony, quite a significant amount of time before the tenancy ended, following an agreement to do so under a previous application.

I also find that whilst there are a few marks on the walls, this does not equate to \$350.00 worth of cleaning. The Landlord also did not have receipts or invoices to support the losses claimed. Based on the above, I find there were minor breaches of section 37 of the Act on the part of the Tenants, and I am not prepared to award the full cleaning costs claimed which, as previously noted were uncorroborated by evidence, though I am prepared to award nominal damages of \$75.00.

### *Repairs*

Section 32 of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant, or a person permitted on the residential property by the tenant. Additionally, section 37 of the Act sets out that when a tenant vacates a rental unit, they must leave the rental unit undamaged except for reasonable wear and tear.

Though the precise age of the kitchen fittings was not known by either party, from reviewing the photographic evidence I find they appear to be very dated. Given this, and the Tenants' quite plausible argument the door came loose of its own accord, I attribute this to wear and tear which the Tenants are not responsible for, per section 37 of the Act.

The Landlord's allegation the Tenants broke a bedroom door was not supported by any evidence. This alleged damage was not mentioned in the condition inspection report, was not recorded in the photographic evidence, and was disputed in plausible testimony from the Tenants. In these circumstances, I find the Landlord has failed to establish the Tenants breached the Act in relation to their claims for damage to the rental unit, and the request is dismissed without leave to reapply. As an aside, the amounts sought for damages were also unsupported by evidence such as a receipt, invoice, or record of time spent, and cost of parts and labour incurred.

### *Disposal costs*

As noted above, section 37 of the Act requires a tenant to leave a rental unit reasonably clean when they vacate a rental unit. Additionally, as set out in Policy Guideline 1 - *Landlord & Tenant – Responsibility for Residential Premises*, a tenant is responsible for

removal of garbage at the end of the tenancy unless there is an agreement to the contrary.

It was undisputed by the parties that the Tenants left behind a cabinet. Though the Tenants took the position the mattress was already present in the rental unit at the start of the tenancy, I note this furnishing is not included in section 4 of the tenancy agreement. As such I find on a balance of probabilities the mattress was not included in this tenancy.

Based on the above, I find the Landlord has established their claims for the cost of removing the mattress and cabinet, though again, the Landlord has failed to establish the value of loss incurred. I am not prepared to award the full \$200.00 requested as I find this to be excessive and award damages of \$100.00.

### *Security deposit*

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the evidence before me and the testimony of both parties, I find that the tenancy ended on August 1, 2024. The Tenants served their forwarding address within the two weeks after the tenancy ended. Though a record of the forwarding address was not provided as evidence, given the Landlord's Agent acknowledged receipt on August 7, 2024, under section 71(2)(b) of the Act I find the Tenant's forwarding address was sufficiently served for the purposes of this Act and received on August 7, 2024. The Landlord submitted their Application on August 22, 2024. Given this, the Landlord applied within the 15-day timeframe set out in section 38(1) of the Act and the doubling provisions of section 38(6) of the Act do not apply.

As I have made a payment order totalling \$175.00 in favour of the Landlord, as outlined previously in this Decision, I authorize the Landlord to retain this amount from the

Tenants' security deposit in satisfaction of the payment order under section 72(2)(b) of the Act. Under section 62(3) of the Act I order the Landlord to return the remainder of the security deposit, plus interest, to the Tenants.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated as \$31.59 using the Residential Tenancy Branch interest calculator using today's date.

### *Filing fee*

As the Landlord was at least partially successful in their Application, which was necessary given the Tenants did not authorize them to retain the security deposit, I grant the Landlord's request to recover the \$100.00 filing fee from the Tenants.

## **Conclusion**

The Landlord's Application is granted in part. The Landlord may retain \$175.00 from the security deposit in satisfaction of the payment order and a further \$100.00 for the filing fee. The Landlord is ordered to return the remainder of the security deposit, plus interest, to the Tenants.

The Tenants are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Landlord. It is the Tenants' obligation to serve the Monetary Order on the Landlord. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below:

| <b>Item</b>                     | <b>Amount</b>   |
|---------------------------------|-----------------|
| Security deposit, plus interest | \$756.59        |
| Less: monetary order            | (\$175.00)      |
| Less: filing fee                | (\$100.00)      |
| <b>Total</b>                    | <b>\$481.59</b> |

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 14, 2024

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Residential Tenancy Branch