

DECISION

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution 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
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- A Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants were deemed served by email October 24, 2024, in accordance with section 89(1) of the Act. An RTB Form 51 and a copy of the email was provided.

I find that the Landlords were deemed served by email on October 21, 2024, in accordance with section 89(1) of the Act. An RTB Form 51 and a copy of the email was provided.

Service of Evidence

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

Landlord F.F.B. advised they never received the Tenants' evidence. The Tenants advised they did not serve their evidence on the Landlords. As the evidence was not served on the Landlords, I have not considered the Tenants' evidence.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

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.

Evidence was provided showing that this tenancy began on July 30, 2023, with a monthly rent of \$2,800.00, due on the first day of the month, with a security deposit in the amount of \$1,400.00, paid July 15, 2023. The tenancy ended August 28, 2024, and the Landlords argued the Tenants continued to have access to the rental unit to complete repairs until September 2, 2024.

The Landlords are seeking compensation for damages and requested to retain the security deposit. The Tenants are seeking the return of the security deposit.

Security Deposit

The parties advised the move-in condition inspection report was completed on July 30, 2023; however, it was not signed by the Tenants. The Tenants argued they never received a copy of the move-in condition inspection report. The Landlords' position is that it was given in-person to the Tenants a week after it was completed. The parties advised the move-out condition inspection report was completed August 28, 2024, and the Landlords argued a second inspection was done September 2, 2024. The parties advised that a copy of the move-out report was sent to the Tenants via email around September 13, 2024. The Tenants argued they only received 5 of the 7 pages of the move-out condition inspection report. The Tenants argued they provided their forwarding address via email on October 14, 2024, on the RTB Form 51. The Landlords argued that email did not count as a proper forwarding address.

The Landlords' position is that after the walk through on August 28, 2024, the Landlords pointed out damages that needed to be prepared and gave the Tenants until the end of the weekend to complete those repairs. The Landlords argued when they returned September 2, 2024, those repairs were not completed. The Tenants' position is that the Tenants suggested they return the next day to complete the repairs, but the Landlords advised they had not obtained new tenants, so the Tenants had time to complete the repairs. The Tenants' argued they were given no deadline to complete the repairs.

Damages

The Landlords are seeking the following damages:

Item	Description	Amount
1	Wall Patch and Painting	\$798.00
2	Cleaning	\$162.75
3	Missing Key Fob	\$100.00
4	Balcony Door	\$126.00
	TOTAL	\$1,186.75

#1 Wall and Paint Patching

The Landlords are seeking \$798.00 for patching and painting holes in 3 of the bedrooms and the main bathroom. Landlord F.F.B. argued that the Tenants installed items to the walls which left marks after they were taken down. The Landlords provided photographs and a copy of the estimate for wall patch and spot painting. The photographs show that most of the holes were patched but not painted. According to Landlord F.F.B the rental unit was last painted in 2022, after the Landlords obtained the property from the builder.

The Tenants' position is that they patched the walls and asked the Landlords for the colour of the paint, but the Landlords' response was that they did not know and to contact a painter. The Tenants argued that since the rental unit would need to be painted soon that the patching was enough to fulfill their obligations. The Tenants also argued they missed one patch because the Landlords restricted their access after September 2, 2024, and they could not complete it.

#2 Cleaning

The Landlords are seeking \$162.75 for touch up cleaning after the Tenants vacated. Landlord F.F.B argued that there was sanding dust on the floor, glue residue on the floor and the bathroom and oven were not cleaned. No photographs were provided but the Landlords did provide an invoice.

The Tenants' position is that they did clean the rental unit, and they had planned to come back to clean anything missed but after September 2, 2024, their access was revoked.

#3 Missing Key Fob

The Landlords are seeking \$100.00 for an unreturned key fob. The Landlords' position is that 3 key fobs were given at the start of the tenancy but only 2 were returned. The Landlord provided an email from the Strata Company outlining the cost for a replacement fob.

The Tenants' position is that they arranged to return the key fob, and the Landlords were going to leave an electrical cover open for the key fob to be returned, but when the Tenants came to drop off the key fob the electrical cover was closed. The Tenants argued they left the key fob slightly hidden beside the electrical box and sent a photo to the Landlords.

#4 Balcony Door

The Landlords are seeking \$126.00 for a scratch on the balcony door. The Landlords position is that the Tenants were the only ones who had access to the balcony door. The Landlords provided a photograph of the scratch and an email from the Strata Company outlining the price to repair the door.

The Tenants' position is that many of the balcony doors on the main floor have that scratch because of the location of the gate that opens towards the balcony door, which is normal wear and tear. The Tenants argued anyone has access to open the gate.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act states that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that 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.

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

#1 Wall and Paint Patching

Based on the photographs provided by the Landlords and the number of patches, I find that the holes and patches in the rental unit were beyond reasonable wear and tear. I find that the Landlords suffered a loss, and the Landlords provided a copy of the estimate for the repair.

The parties have differing positions on the deadline the Tenants have to complete the additional repairs. The Landlords argued it was the weekend, September 1, 2024, and the Tenants argued there was no deadline as the Landlords had not obtained new tenants. Both parties have presented equally probable scenarios of the deadline to complete the repairs; however, the onus falls on the Landlords to shift the balance in their favour. The evidence supplied by the Landlords was insufficient to shift the balance in their favour. As such, I find the Landlords did not fully mitigate their loss, as the Tenants were not allowed to return to complete the final patch. However, the Tenants also made the choice not to complete the painting regardless of the extra time. As such, I find that the amount requested by the Landlords is reasonable despite the Tenants not being able to complete the 1 patch.

The useful life of interior paint is 4 years, according to Policy Guideline #40. Based on the testimony of the Landlord the rental unit was last painted in 2022. As such, I find that the paint had 2 years of useful life expectancy left. However, given that the invoice is for spot painting and not a full repaint of all the walls, I find that the useful life expectancy is already taken into consideration.

Based on the above, I award the Landlords \$798.00 as I find it takes into consideration the comments above.

#2 Cleaning

Section 37(2)(a) 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. Policy Guideline #1 states that a tenant is not responsible for cleaning to bring the premises to a higher standard than that set out in the Act.

The Landlords did not provide any evidence to support what cleaning was missed. As such, I find that I am unable to determine if the additional cleaning that the Landlords paid for was to bring the rental unit to the standard of clean required under the Act or to a higher standard. As such, the Landlords have failed to prove the Tenants breached the Act. Based on the above, I decline to award any compensation for the cleaning.

#3 Missing Key Fob

Policy Guideline #1 states that a tenant must return all keys at the end of the tenancy, including those that they had cut at their own expense. Section 37(2) of the Act also requires that a tenant return all keys the landlord when the tenant vacates.

Based on the testimony of the parties, I find that 1 key fob was not returned. As such, I find that the Landlords suffered a loss and had to pay for a new key fob. The Landlords provided a copy of the cost from the Strata Company. The Landlords also have an obligation to mitigate any damage. I accept the testimony of the Tenants that they attempted to return the key, but the electrical box was not left open, so they left the key hidden nearby. Based on the testimony of both parties, I find that the Landlords only partially mitigated as they did not leave the electrical box open and that the Tenants are also partially responsible as the key fob, while hidden, was left out in the open. Based on the above, I award the Landlords \$50.00, as I find this takes into consideration the partial mitigation by the Landlords.

#4 Balcony Door

A Tenant is responsible for repairing 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 property by the tenant, according to section 32(3) of the Act. The Landlords provided one photograph showing the scratch on the balcony door; however, the Tenants argued the scratch is caused by the gate opening towards the balcony door and everyone has access to the date. The onus is on the Landlords to establish the damage was caused by the Tenants' neglect or deliberate action and considering there are no photographs showcasing the layout of the balcony door and gate, I find that I am unable to determine that the scratched was caused by the deliberate actions or neglect of the Tenants. As such, I decline to award any compensation for the balcony door.

Based on the above, I find the Landlords are entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$848.00.

Are the Landlords entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

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 stated in Policy Guideline #49, a forwarding address must be a mailing address. Based on the statement of both parties, I find that the Tenants did not provide a mailing address for the forwarding address until October 14, 2024, when the Tenant provided an RTB Form 51 with the mailing address listed. Landlord F.F.B. argued that the Tenants providing the RTB Form 51 did not qualify as providing a forwarding address. The requirements under the Act and Policy Guidelines are that the forwarding address be a mailing address and be in writing. I find that sending the RTB Form 51, which the Landlords confirm receiving, qualifies as sending a forwarding address in writing, under 71(2) of the Act. As such, I find that the forwarding address was provided October 14,

2024. I find that the Landlords made their application on October 17, 2024 and the application by the Landlords was made within the timeframe required.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the testimony of both parties, I find that the move-in and move-out condition inspection reports were completed, and a copy of the move-out condition inspection report was sent to the Tenants September 12, 2024. The parties disagree about whether the move-in condition inspection report was provided to the Tenants. The Landlords' position was that it was given in person a week after it was completed, but the Tenants dispute that. However, even if it was determined that the Landlords did not provide a copy of the move-in condition inspection report to the Tenants, the Landlords made an application for cleaning, as such the Landlords did not breach section 38(1) of the Act and the security deposit is not doubled.

Based on the above, I allow the Landlords to retain a portion of the Tenants' security deposit, plus interest, in satisfaction of the monetary award. The remaining balance on the security deposit, plus interest, is returned to the Tenants.

Is the Landlords or the Tenants entitled to recover the filing fee for this application from the Other Party?

As both parties were successful and awarding the filing fee for both parties would offset each other, I find that neither party is entitled to the filing fee.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$599.86** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$848.00
authorization to retain a portion of the Tenants' security deposit, plus interest, in partial satisfaction of the Monetary Order requested under section 38 of the Act	\$1,447.86
Total Amount	\$599.86

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order 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.

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: December 2, 2024

Residential Tenancy Branch