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; and
- return of the filing fee pursuant to s. 72.

M.H. attended as the Tenant and was joined by C.N., whom I am told resided in the rental unit. J.F. 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 Applications and Evidence

The Tenant advised that she served her application and evidence on the Landlord, which the Landlord acknowledges receiving without issue. Accepting this, I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant's application materials.

The Landlord advised that he served his application and evidence on the Tenant by way of registered mail. The Tenant acknowledges receipt of the registered mail package, though says it only contained a copy of the Landlord's application as well as a summary of the documents he had uploaded to the Residential Tenancy Branch. The Tenant denies receipt of any evidence.

Upon some questioning, the parties confirm videos put into evidence by the Landlord had been provided to the Tenant by way of WhatsApp messages sent sometime immediately after the tenancy ended on August 31, 2024. The Tenant emphasized,

however, that she did not have notice from the Landlord that those videos would be relied upon at this hearing.

The Landlord emphasized that he printed off all the documents he provided to the Residential Tenancy Branch and put them into the registered mail package sent to the Tenant, though acknowledges the videos were not included in the form of a USB key or the like.

Looking first to the Landlord's application, I accept that this was received by the Tenant as she acknowledged its receipt after it was sent via registered mail. Accepting this, I find that Tenant was served with the Landlord's application in accordance with s. 89(1) of the *Act*.

Looking next to the Landlord's evidence, as basic proposition, a party to a dispute who intends to rely upon evidence must ensure the party on the other side to that dispute received notice of that evidence. Under the Rules of Procedure, that means evidence must be served on the other side as part of the dispute resolution proceedings. Failure to serve evidence risks the exclusion of evidence due to procedural fairness issues tied to relying on evidence for which a recipient party has not received.

At the hearing, I asked for submissions on what was to be done with respect to the issue of service of the Landlord's evidence. The Landlord did not ask for an adjournment to correct any issues with service, indicating he was prepared to proceed despite the risk I may exclude his evidence.

I have been provided a proof of service form, which indicates the registered mail package was sent on November 5, 2024. That form does not include what documents were included in the registered mail package, nor has the Landlord provided any other evidence to support which documents were included in the registered mail package.

Given the evidence before me, I find that I am unable to determine which documentary evidence has been served by the Landlord. It is insufficient for the Landlord to serve a summary of documents provided to the Residential Tenancy Branch as the Landlord must provide those documents to the Tenant himself. The Landlord asserts he did so but has failed to provide evidence to support this.

I further note that the Landlord has provided several videos to the Residential Tenancy Branch, which he admits had not been served as part of these proceedings rather having been sent sometime before he filed his application. I find that doing so, despite not serving the videos, supports the Landlord likely did not follow the process for serving documents writ large, such that I cannot ascertain what he did and did not serve.

Accordingly, I exclude the Landlord's evidence in its entirety as I find it would be procedurally unfair to review and rely upon evidence for which the Tenant has received no notice. I further accept that any prejudice brought about by the exclusion results from

the Landlord wishing to proceed to hearing, despite my advising him of the risk. The Landlord could have sought an adjournment but did not do so.

Issues to be Decided

1) Is the Landlord entitled to monetary compensation for damages to the rental unit caused by the Tenant or her guests?
2) Is the Landlord entitled to retain a portion or all the Tenant's security deposit and pet damage deposit?
3) Is either party entitled to the return of 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 September 1, 2021.
- The Tenant moved out of the rental unit on August 31, 2024.
- Rent of $2,300.00 was due on the last day of each month.
- A security deposit of $1,100.00 and a pet damage deposit of $500.00 was paid by the Tenant.

I have been provided with a copy of two tenancy agreements. The first was signed in August 2021, set rent at $2,155.00, and only included the security deposit. The second was signed in June 2022, set rent at $2,300.00, and includes both the security deposit and pet damage deposit.

1) Is the Landlord entitled to monetary compensation for damages to the rental unit caused by the Tenant or her guests?

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.

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."

Summary of the Landlord's Claims

The Landlord, in his application, seeks $2,572.00 in compensation, describing his claim as follows:

> One weeks rent $550 for repair time, $800 for painting, $441 for cleaning, $250 for router, $41 for fridge shelf, $200 pet fine, $65 for hydro bill, August door lock replacement for 175, cooking range element $50

At the hearing, the Landlord confirmed he was withdrawing his claim for replacing the door lock, such that this portion is not dealt with in this decision. Further, the Tenant confirmed that she was agreeable to paying the costs for the hydro bill, the fridge shelf, and the range elements in the amounts sought. Accordingly, I treat these portions as a partial settlement of the Landlord's claims and grant the Landlord $156.00 for these amounts ($65.00 + $41.00 + $50.00).

Claim for Cleaning Costs

The Landlord asserts that the Tenant failed to adequately clean the rental unit, speaking to dirty windows and flooring, grease in the kitchen, cat hair throughout the rental unit, and a dirty bathtub. The Landlord tells me he paid $441.00 to a cleaner to address these issues, which he seeks from the Tenant.

The Tenant argued that the Landlord did not schedule a move-out inspection, such that any deficiencies that would have been noted at that time could have been addressed by her had she been told that there was a problem from the Landlord.

In written submissions, the Tenant indicates that she was willing to return to clean the rental unit, though this was not accepted by the Landlord. I note that the Tenant's evidence contains a message making this offer to the Landlord after he noted cleanliness issues, where the Tenant says "we're sorry about that. We rushed moving out so we are happy to come back to deep clean the place."

The Tenant's evidence contains a copy of the cleaning estimate provided to her by the Landlord in a message in September 2024. That quote is in the amount of $441.00, which the Landlord confirms he ended up paying.

Though I have no direct evidence in the form of photographs or the move-out condition inspection report of the cleanliness of the rental unit at the end of the tenancy, I find it more likely than not that the rental unit was not reasonably clean. The Tenant does not deny the rental unit was unclean, rather arguing she was not given opportunity to come back and clean the rental unit due to the lack of a move-out inspection.

With respect, the Tenant's obligation to clean the rental unit is independent of the Landlord's obligation to schedule a move-out inspection and prepare a move-out condition inspection report. The messages in the Tenant's own evidence indicate some contrition on the cleanliness, arguing she was rushed when moving out. The Tenant cannot return after the tenancy to address the deficiency. The Tenant is expected to leave the rental unit reasonably clean at the end of tenancy and, under these circumstances, I find it more likely than not that she failed to do so.

I find that the Landlord has established the Tenant failed to leave the rental unit in a reasonably clean state in contravention of her obligation under s. 37(2) of the *Act*. I accept that the Landlord paid $441.00 to clean the rental unit as demonstrated by the estimate in the Tenant's evidence that he says he paid. Accordingly, I grant the Landlord $441.00 to clean the rental unit.

Internet Router

The Landlord testified that he is seeking $250.00 for the cost of replacing an internet router that was non-functional when the tenancy ended, though he indicates it was functioning when he went to the rental unit in August 2024 when showing the place to prospective tenants. I am told by the Landlord that the router was 7 years old. I asked the Landlord whether he alleged the Tenant damaged the router and was told that it simply was not working.

With respect to the claim for the internet router, I find that the Landlord has failed to establish it was damaged by the Tenant in contravention of s. 37(2) of the *Act*. Though internet, and the router, was provided as part of the tenancy agreement, the Tenant is only responsible for damage exceeding reasonable wear and tear. In practice, internet routers, like appliances, degrade over time and need to be replaced. That occurs as the item reaches the end of its useful life. Accordingly, I dismiss this portion of the Landlord's claim without leave to reapply.

Strata Fine

The Landlord also seeks $200.00 he tells me he paid after he was fined by the strata corporation due to the Tenant having a pet in the rental unit. The Tenant's evidence contains a letter from the strata property manager dated July 22, 2024 regarding the fine, which is when the Landlord says he was asked to pay the $200.00.

I asked the Landlord whether the Tenant signed a Form K as part of the tenancy agreement or whether she was given a copy of the strata bylaws. The Landlord failed to provide a clear answer, indicating the Tenant only received the letter. The Tenant denies signing a Form K or being given the bylaws.

I noted that the Tenant paid a pet damage deposit to the Landlord of $500.00. The Landlord argued the Tenant brought in a pet without his consent. With respect, I do not find that likely. The Landlord could have taken issue with the pet if it was discovered, though he asked for the pet damage deposit and it was included when the tenancy agreement was renewed in 2022.

I find that the Landlord cannot seek compensation for the strata fee. The Tenant was not given the bylaws and did not sign a Form K, such that the terms of the bylaws were not incorporated into the tenancy agreement. Further, the Landlord permitted the pet when he took the pet damage deposit. He could have raised issue with the pet and sought to end the tenancy, though did not do so. Rather, he took the Tenant's money, thereby indicating that pets were permitted, such that the Tenant cannot be held responsible for the strata fine. This portion of the Landlord's claim is dismissed without leave to reapply.

Repainting Costs

The Landlord seeks $800.00 for the costs of repainting the living room and one bedroom at the rental unit, indicating the Tenant put many holes from hanging wall pictures. I am told by the Landlord that the rental unit walls were last painted five years ago.

The Tenant indicates that the walls were damaged at the outset of the tenancy and that there was no move-in condition inspection report to verify the claim advanced by the Landlord.

I find that the lack of move-in condition inspection report is fatal to this portion of the Landlord's claim. The Landlord cannot rightly claim compensation from the Tenant as there is no baseline to compare the state of the rental unit walls when the tenancy started. The Tenant cannot be held responsible for damage that pre-existed the tenancy.

Further, the Landlord is not entitled to full replacement cost as depreciated values must be considered. Items degrade over time and need repair or replacement. For example, a tenant cannot be held responsible for paying for a new refrigerator when the one it replaced was 20 years old. Doing so amounts to betterment, which is contrary to the compensatory principle that a party be put in the same position they were in before they were wronged.

Policy Guideline #40 provides guidance on the useful life of building elements, suggesting that interior wall paint has an expected useful life of 4 years. As the walls were last painted 5 years ago, the paint was beyond its useful life in any event such that the depreciated value is zero given its age even if it were attributable to the Tenant.

This portion of the Landlord's claim is dismissed without leave to reapply.

Lost Rental Income

The Landlord also seeks $550.00 due to one week of lost rental income in September 2024. I am told that he had a tenant lined up for September 1, 2024 but that their occupancy was delayed due to the issues in the rental unit I am told were caused by the Tenant. The Landlord explained that the new tenant moved in on September 16, 2024, but the rental unit was repaired within a week, such that this is what he is seeking from the Tenant.

I find that the Landlord's claim cannot succeed as I do not have evidence of the new tenancy. It may be the Landlord had a tenant for September 1, 2024, though there is nothing to support this in the documentary evidence.

Further, the issues alleged by the Landlord which are attributable to the Tenant, being cleaning, could have reasonably been addressed by the Landlord prior to September 1, 2024 to ensure the tenancy continued. The Landlord cannot cite the other issue, being repainting, as it was not the Tenant's fault as the rental unit required repainting regardless.

I find that there is also a mitigation issue on this portion of the Landlord's claim given the only breach causally connected to the Tenant was cleaning, which could have been dealt with quickly as the tenancy is presumed to have ended at 1:00 PM on August 31, 2024 as per s. 37(1) of the *Act*.

Accordingly, this portion of the Landlord's claim is dismissed, without leave to reapply.

Summary

I grant the Landlord $156.00 consented to by the Tenant and $441.00 for cleaning the rental unit. All other aspects of the Landlord's monetary claim are dismissed, without leave to reapply.

2) Is the Landlord entitled to retain a portion or all the Tenant's security deposit and pet damage deposit?

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. A landlord may not claim against the deposit if the application is made outside of the 15-day window established by s. 38 or their right to do so has been extinguished by ss. 24 or 36.

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 and Tenant confirm there was no written move-in condition inspection report. Section 23 of the *Act* imposes an obligation on a Landlord to schedule a move-in

inspection and prepare a written move-in condition inspection report in accordance with the Regulations. I find the Landlord failed to do so. The Landlord's failure triggers s. 24(2) of the *Act*, which extinguished his right to retain claim against the security deposit and pet damage deposit for damages to the rental unit.

The Tenant indicates that she provided the Landlord with her forwarding address by way of letter sent to the Landlord on September 9, 2024. I have been given a copy of the letter in question. The Landlord confirmed he received the Tenant's forwarding address, though says he did not file a claim as he was waiting to hear back from the Tenant who said she was consulting a lawyer.

I find that the Tenant provided her forwarding address in writing to the Landlord by way of mail sent on September 9, 2024. I find that this was in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant's forwarding address on September 14, 2024.

I am told the Landlord still retains the security deposit and pet damage deposit, and review of his application shows it was filed on November 5, 2024. I find that the Landlord had no right to claim against the security deposit for damages to the rental unit, which is what he did. Further, the Landlord filed his application well after 15 days of receiving the Tenant's forwarding address. In all circumstances, I find that s. 38(6) of the *Act* is triggered, such that the Tenant is entitled to double her security deposit and pet damage deposit.

The Tenant is also entitled to interest on her security deposit and pet damage deposit under s. 38(1)(c) of the *Act*, which is calculated in accordance with the Regulations. In this case, interest on the security deposit is $50.62, which was paid on August 13, 2021 as set out in the e-transfer put into evidence. Interest on the pet damage deposit is $23.02, which was paid on June 16, 2022 as shown in the e-transfer in the Tenant's evidence. I note that interest has been calculated by use of the Residential Tenancy Branch's deposit interest calculator for the entire period in which the funds have been held in trust by the Landlord, being from date of payment to the date of this decision.

Taking the above into account, I offset the amount granted to the Landlord from the total he owes to the Tenant for the deposits as follows:

Item	Amount
Compensation to the Landlord Consented to by the Tenant	($156.00)
Compensation to the Landlord for Cleaning the rental unit	($441.00)
Double the Return of the Security Deposit	$2,200.00
Double the Return of the Pet Damage Deposit	$1,000.00
Interest on Both Deposits	$73.64
TOTAL OWED TO TENANT	$2,676.64

3) Is either party entitled to the return of their filing fee?

I find that the Landlord was largely unsuccessful. Accordingly, I dismiss his claim for his filing fee, without leave to reapply.

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

Conclusion

I grant the Landlord's claims in the total amount of $597.00. All other aspects of the Landlord's claim, including the claim for his filing fee, are dismissed without leave to reapply.

The Tenant is entitled to double the return of her security deposit, double her pet damage deposit, and interest on the deposits in the total amount of $3,273.64.

The Tenant is entitled to her $100.00 filing fee, which shall be paid by the Landlord.

In total, I order under ss. 67 and 72 of the *Act* that the Landlord pay **$2,776.64** to the Tenant ($3,273.64 + $100.00 - $597.00).

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: December 16, 2024

Residential Tenancy Branch