DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the Act).

The Landlord applied for:

- a Monetary Order for damage to the rental unit
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security and pet damage deposits in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- a Monetary Order for the return of all or a portion of their security deposit and pet damage deposit
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package sent by registered mail on October 18, 2024, and being served with the Landlord's amendment and evidence by courier on December 2, 2024, and additional evidence served in person on December 4 and 10, 2024.

The Landlord served the Tenant with additional evidence on December 19, 2024, the day before this hearing, which ahs been excluded from the proceeding as it would be procedurally unfair and prejudicial to the Tenant to consider evidence which they have not had sufficient time to review and respond to for this proceeding.

The Landlord acknowledged being served with the Tenant's hearing package and evidence sent by registered mail on October 18, 2024, and the Tenant's additional evidence served by email on December 6 and 12, 2024.

Preliminary Matter

The Landlord applied in their original application for a Monetary Order for damage to the rental unit.

However, on review of the application and submissions, it is clear the Landlord is also making claims for items that are not considered damage under the Act, including lawn maintenance costs, cleaning, and replacement of light bulbs.

To encompass the above issues, which are clearly identified in the Landlord's application, I have amended the Landlord's application under section 64(3)(c) of the Act, to add the following claim:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement

The monetary value of the Landlord's claim remains unchanged, this issue is added simply to include claims that are not related to damage to the rental unit under the correct part of the Act.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security and pet damage deposits in partial satisfaction of the Monetary Order requested?

Is the Tenant entitled to the return of their security and pet damage deposits?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Facts 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.

This tenancy began on July 1, 2018, with a monthly rent of $3375.00, due on the first day of the month, with a security deposit of $1550.00 and a pet damage deposit of $1550.00.

The Landlord claims the parties completed a walk through inspection of the rental unit on June 30, 2018 at 2:00pm, with both parties signing a move in condition inspection report the same day. The Landlord claims the report was provided to the Tenant after the inspection.

The Tenant claims that the Landlord completed the move in condition inspection report prior to the walk through, and that the walk through was just the Landlord showing the Tenant how the property functions rather than inspecting the condition of the unit. The Tenant confirms they signed the condition inspection report, but believed at the time that it was just a signature to receive the keys of the rental unit. The Tenant claims they did not receive a copy of the report until August 2024.

Both parties confirmed that a move out condition inspection was completed. The Tenant refused to sign the report as they did not agree with the content of the report, but confirmed they were in attendance for the inspection. The Landlord provided the Tenant with a copy of the report after it was completed.

Both parties provided copies of the condition inspection reports as evidence for this proceeding.

The Tenant sent the Landlord their forwarding address by text message on July 31, 2024. The Landlord testified they did not consent to text message for service of documents. The Tenant sent the Landlord their forwarding address by registered mail on September 16, 2024. The Landlord filed their application on September 19, 2024, and the RTB required some corrections to be made before the Notice of Dispute was provided to the Landlord for service on October 15, 2024.

Window Coverings: $3740.10

The Landlord claims $3740.10 for the estimated cost to replace the window coverings in the rental unit. The Landlord claims the window coverings were damaged by mold, and by the Tenant cutting them down, during this tenancy. The Landlord has provided two estimates for the cost to replace these window coverings in their evidence, but has not yet purchased the replacement coverings.

The Tenant testified that they notified the Landlord by email on March 24, 2021, about the mold developing on the window coverings in the sunroom, as provided in their evidence. The Tenant raised this issue again by email shortly after, along with photos of the mold, and requested that the Landlord address the problem. The Tenant testified that they did not receive any response from the Landlord about the window coverings and the mold, nor did the Landlord claim at that time that the Tenant was responsible for the mold or give instructions for the Tenant to resolve the problem.

The Tenant argues that the mold on the window coverings was a concern for their health, and as they did not receive a response from the Landlord after raising the issue on two occasions, they removed the window coverings.

The Tenant emailed the Landlord in November 2023, notifying them that the mechanism for the bedroom window coverings had stopped working, and required repair. Again, the Landlord did not respond to this email to address the problem, nor to claim that the Tenant was responsible for this repair themselves. The Tenant believes the window coverings in both the sunroom and bedroom were likely old and past their useful life of 10 years, which led to the molding and break down of mechanism.

Flooring replacement: $8783.48

The Landlord claims $8783.48 for the estimated cost to replace flooring in the master bedroom and sunroom in the rental unit. However, the Landlord has not yet replaced the flooring, and testified that they are still looking into their options.

The Landlord gave extensive testimony about the unique and antique status of the flooring in the rental unit, which they claim was damaged by the Tenant and the Tenant's pet during this tenancy. The Landlord is investigating similar flooring options and has not had sufficient time to source and install replacement flooring before this hearing, as the flooring is up to 100 years old.

Lawn Maintenance: $1650.00

The Landlord claims $1650.00 for the cost to maintain the lawn of the residential property for the period of March 2022 to July 2024. The Landlord claims that they had a verbal agreement with the Tenant that the Landlord would be responsible for the lawn maintenance if the Tenant was responsible for maintaining the garden beds.

The Landlord claims that the Tenant stopped maintaining the garden beds in March 2022. The Landlord argues that as the Tenant failed to meet their obligation to maintain the gardens, the Landlord was no longer responsible for maintaining the lawns. The Landlord never asked the Tenant to pay for or take over lawn maintenance during the tenancy, but argues that they should be reimbursed for the amount they spent on lawn maintenance during the period the Tenant did not maintain the gardens.

The Tenant testified that they never agreed to pay for, nor were they asked to pay for lawn maintenance for the duration of this tenancy. Since the start of the tenancy the Landlord hired and paid for a person to mow and maintain the lawns on the property. The Tenant does not agree that there was any requirement or obligation for them to maintain the gardens in exchange for lawn maintenance, and the tenancy agreement does not establish that the Tenant is responsible for either of these items or the costs associated.

Cleaning: $462.00

The Landlord claims $462.00 for the cost to clean the rental unit after the Tenant moved out. The Landlord claims the rental unit was not left reasonably clean by the Tenant, and noted the following observations:

- Cobwebs and dust bunnies throughout the unit
- Grimy and unwiped baseboards
- Mold on the windows and window frames
- Abandoned food in the unwiped kitchen cabinets
- Unclean refrigerator and appliances
- Unwiped walls and cabinetry

The Landlord provided photos of the rental unit taken after the move out inspection, and a copy of the invoice for the cleaning service as evidence to support their claims.

The Tenant testified that they agree they did not leave the rental unit reasonably clean, as they were rushed to move out and did not have sufficient time to clean the unit properly. The Tenant claims they offered to hire their own cleaner or pay the Landlord a set amount for cleaning, but the Landlord declined.

The Tenant argues that the Landlord could have raised issues with the cleanliness of the rental unit during the inspection in June 2024, but they did not. The Tenant argues that they believe they could have hired a cleaner for a lower cost than claimed by the Landlord.

Lightbulb replacement: $120.51

The Landlord claims $120.51 for the cost to replace the burnt-out light bulbs in the rental unit. The Landlord provided photos of the burnt-out bulbs, and copies of the receipts for the replacement bulbs as evidence to support their claims.

The Tenant argues that the bulbs in the rental unit, particularly the kitchen, burnt out more quickly than normal and required frequent replacement, due to an electrical issue in the rental unit. The Tenant requested that the Landlord address this issue but received no response.

Cleaning of drapes: $160.00

The Landlord claims $160.00 for the estimated cost to clean the drapes in the rental unit. The Landlord claims there are 8 sets of drapes in the rental unit, which were not clean when the Tenant moved out. The Landlord claims they spoke with a professional who said it would cost $4-5 per drape to clean them.

The Tenant argues the Landlord did not provide any evidence that the drapes were dirty at the end of the tenancy, nor have they proven they have suffered any loss for cleaning the drapes.

Is the Landlord entitled to a Monetary Order for damage to the rental unit?

Section 35 of the Act establishes 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.

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.

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

Window Coverings: $3740.10

Based on the evidence and testimony of the parties, I find that the Landlord has failed to prove that the Tenant caused damage to the window coverings in the rental unit in breach of section 32 of the Act, to prove the value of their loss for replacement of the window coverings, or that they acted reasonably to minimize their loss.

Firstly, per the Tenant's email evidence, I find that the Tenant alerted the Landlord about the problems with both the molding sunroom window coverings and the failed mechanism on the bedroom window coverings, as soon as the problem arose. The Landlord failed to respond or address these concerns, nor did they ask the Tenant to repair the problems themselves.

The Landlord did not identify why or how the Tenant could be responsible for the mold growing on the sunroom window blinds. There is no evidence that any action or neglect of the Tenant led to the development of mold. I find it more likely that, as the rental unit is in a humid location, and the Landlord confirmed the window coverings were present since before 2016, that the age of the blinds and humidity of the natural environment led to the mold growth, at no fault of the Tenant.

The Landlord has not established nor proven that the Tenant's action or neglect led to the failure of the mechanism for opening and closing the bedroom window coverings. Again, I find it likely that this resulted from regular use of the blinds, as the Landlord has not identified how the Tenant caused this damage, nor have they proven the age of the blinds with supporting evidence.

Secondly, the Landlord has not actually replaced the window coverings in the rental unit, nor provided any evidence of the original cost of the window coverings. The Landlord relies solely on two potential estimates for the replacement costs, but as the Landlord has not actually purchased or installed new window coverings, their loss has neither been established nor proven.

Lastly, the Landlord failed to minimize their loss by not responding to the Tenant's emails about the mold on the sunroom window coverings, or about the mechanism on the bedroom window coverings. Both issues, had they been addressed by the Landlord per their obligations under the Act at the time they were raised, may have been successfully remediated without the need for replacement blinds.

The Landlord may have been able to clean and remove the mold from the sunroom window coverings had they not waited over three years to address the problem. The Landlord may have been able to repair the mechanism for the bedroom blinds had they not waited close to a year to address the problem.

The Landlord's failure to address these issues as they arose has led to the need for the window coverings to be replaced. This is no fault of the Tenant, who diligently notified the Landlord about the issues. Therefore, the Landlord has not taken the reasonable steps to minimize their loss, as required under section 7 of the Act.

For the reasons above, the Landlord's claim for $3740.10 to replace the window coverings in the rental unit is dismissed, without leave to reapply.

Flooring replacement: $8783.48

As the Landlord has not yet replaced or repaired the flooring in the rental unit, I find that the Landlord's loss has not been established or proven at the time of this hearing. The Landlord's estimates are not sufficient to prove the value of their loss.

However, given the Landlord's testimony about the unique and antique nature of the flooring, and its age, I find it likely that they did not have sufficient time to source and replace the flooring within the confines of their deadline to claim against the Tenant's security deposit. The Landlord's evidence clearly establishes that they have made extensive efforts to research the flooring and comparable options, but were limited by the timeline under the Act for which they had to make a claim against the Tenant's security deposit.

In these circumstances, I find that it would be unfair, and prejudicial to the Landlord to make a decision regarding the flooring or dismiss the Landlord's claim outright for failure to establish the value of their loss.

Therefore, although the matter of the Tenant's security and pet damage deposits and the remainder of the Landlord's claims will be conclusively decided by this decision, I

find it necessary to dismiss the Landlord's claim regarding the flooring in the master bedroom and sunroom with leave to reapply.

For the reasons above, the Landlord's claim for the cost to replace the flooring in the rental unit is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable time limit.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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.

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

Lawn Maintenance: $1650.00

Based on the evidence and testimony of the parties, and the tenancy agreement before me, I find that the Landlord has failed to prove that the Tenant failed to comply with the Act, regulation, or tenancy agreement by not maintaining the gardens on the property, or by not paying for the lawn maintenance arranged by the Landlord.

There is no section of the Act or regulation which requires a Tenant to maintain the yard of a residential property unless it is specifically set out in an agreed upon term of the tenancy agreement. Although verbal agreements can be considered tenancy agreements and found binding, in this case I find the Landlord has failed to establish that there was a verbal binding agreement between the parties about the garden and lawn maintenance.

There is nothing to suggest, in any of the evidence before me, that the Landlord and Tenant were exchanging responsibilities with regard to the lawn and the garden. The Tenant may have enjoyed use of the garden beds, but there is nothing in either parties evidence which establishes this as a responsibility or obligation of the Tenant. The tenancy agreement does not state that the Tenant is responsible for lawn or garden maintenance or for the costs associated.

Further, if there was such an exchange agreement between the parties, the Landlord failed to act on or enforce their rights under that agreement for over two years, until such time as the tenancy ended. Had this agreement existed, I find it likely that the Landlord would have stopped providing lawn maintenance or otherwise sought payment

from the Tenant for those services sooner, but they failed to do so at anytime. The Landlord simply continued to provide lawn maintenance as they had done since the start of the tenancy.

For these reasons, I find the Landlord has failed to prove, on a balance of probabilities, that the Tenant breached any part of the Act, Regulation, or tenancy agreement, or that this breach resulted in the Landlord's loss.

Cleaning: $462.00

Section 37 of the Act says that a tenant must leave the rental unit reasonably clean at the end of the tenancy.

Based on the evidence and testimony of both parties, I find the Landlord has proven that the Tenant breached section 37 of the Act by not leaving the rental unit reasonably clean.

I find that the Landlord has established and proven their loss by providing photos of the rental unit which support their verbal testimony about the condition of the rental unit, as well as the invoice for the cost to clean the rental unit. I find that the Landlord minimized their loss by hiring a cleaner for a reasonable hourly wage of $40.00 per hour. There is no evidence to suggest that the cleaning work could have been completed at a lower cost, and I do not find the amount claimed to be extreme or unreasonable in this case.

For these reasons, I find the Landlord is entitled to a Monetary Order of $462.00 for cleaning the rental unit under sections 37 and 67 of the Act.

Light bulb replacement: $120.51

Tenancy Policy Guideline 1 says that a tenant is responsible to replace all burnt out light bulbs in the rental unit at the end of the tenancy.

Based on the evidence and testimony of the Landlord, including the photos of the burnt out light bulbs throughout the rental unit, I find the Landlord has established that the Tenant failed to meet their responsibility to replace the lightbulbs in the rental unit.

I find the Landlord has proven the value of their loss by providing receipts for the newly purchased lightbulbs and acted reasonably to minimize their loss by only replacing the lightbulbs that were burnt out at the end of the tenancy.

The Tenant's testimony about a suspected electrical issue does not change the fact that the Tenant is responsible for replacing burnt out lightbulbs. Further, reporting a suspected electrical issue to the Landlord does not establish or prove that the electrical issue exists, nor that this is the reason the light bulbs in question were required to be replaced.

Therefore, I find that the Landlord has proven their claim for $120.51 to replace the light bulbs in the rental unit and is entitled to a monetary order under section 67 of the Act for this cost.

Cleaning drapes: $160.00

Based on the evidence and testimony of both parties, I find the Landlord has failed to prove their claim for the cost to clean the drapes in the rental unit.

The Landlord argues that the drapes require cleaning, however, they did not provide any documentary evidence to support their claims that the drapes were unclean at the end of this tenancy. There are no photos or any other supporting documentation about the drapes, nor did the Landlord describe their condition in sufficient detail to prove that the Tenant breached section 37 of the Act.

Further, as the Landlord has not actually cleaned the drapes, the value of their loss has neither been established nor proven. The handwritten note based on a verbal conversation with a cleaner about the possible cost is not sufficient to prove the Landlord's loss on a balance of probabilities.

As the Landlord has failed to prove the Tenant breached section 37 of the Act by not cleaning the drapes in the rental unit, or to establish the value of their loss, the Landlord's claim for $160.00 for cleaning the drapes in the rental unit is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security and pet damage deposits in partial satisfaction of the Monetary Order requested? Is the Tenant entitled to the return of their security and pet damage deposits?

Section 38(1) of the Act states that within 15 days of 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.

The Tenant argues that their forwarding address was provided in writing on July 31, 2024, by text message, and that the Landlord failed to meet their obligations to apply within 15 days of receiving the forwarding address.

Section 88 of the Act and Section 43 of the Regulation deal with the valid methods of service for tenancy related documents, which includes service of a forwarding address. Text message is not a valid method of service under the Act or the Regulation. Email may be accepted if an email address for service is provided by the party being served, however text message is not listed as an acceptable method of service.

The Landlord provided the Tenant with a valid address for service on the tenancy agreement, which the Tenant used to serve their forwarding address on September 16, 2024, in accordance with section 88 of the Act.

I do not find the Tenant's text message on July 31, 2024, to be sufficient service of their forwarding address. Text message is not a valid method of service under the Act or Regulation, and therefore the Landlord reasonably did not rely on a text message to determine their deadline for filing an application in this case. I find the Landlord filed their application three days after the Tenant served their forwarding address by registered mail in accordance with the requirements of the Act, and therefore the Landlord has complied with section 38(1) of the Act.

The Tenant argues that the condition inspection report completed by the Landlord at the start of the tenancy is not valid, because the report was not completed during the walk through, and the Tenant understood the walkthrough as an informal showing of the rental unit and the way things worked.

I am not convinced by the Tenant's testimony that this move in condition inspection report is invalid.

Section 23 of the Act says the following:

(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

There is no requirement for the Landlord to complete the condition inspection report *during* the inspection itself. The Tenant confirms they were given a copy of the inspection report for their review and signature, and that they signed this document. The Tenant's failure to read the document before affixing their name and signature under a section which clearly states "I – Tenant name – agree that this report fairly represents the condition of the rental unit", is not the fault of the Landlord.

I also do not find it likely that the Landlord prepared a condition inspection report and scheduled an inspection of the rental unit with the Tenant, then failed to actually walk through and inspect the unit as claimed. On a balance of probabilities, I find the Landlord's version of events more likely in this case.

The Tenant's second argument against the validity of the condition inspection report is their claim that the Landlord failed to provide a copy of the report after it was signed. Again, I find it more likely that the Landlord, who has complied with every other requirement under the Act with regard to condition inspections, did provide a copy of the report as required under section 23 of the Act and as they attested to.

I find it more likely, on a balance of probabilities, that the Tenant, who confirmed they did not understand the significance or meaning of the condition inspection report due to their failure to read and review said document, does not recall receiving the report or misplaced their copy.

For the reasons above, I find that the condition inspection report signed by both parties on June 30, 2018, is valid, and I find that the Landlord did comply with the requirements under section 23 of the Act.

I further find that the Landlord complied with the requirements under section 35 of the Act for a condition inspection report at the end of the tenancy on July 31, 2024.

For the reasons above, I find that the Landlord has met their obligations under the Act with regard to condition inspections, and therefore had the right to make this application to claim the Tenant's deposits for damage and pet damage to the rental unit, and that the Landlord did make this application within 15 days of receiving the Tenant's forwarding address by a method of service approved under the Act. Therefore, I find that sections 38(5) and (6) of the Act with regard to doubling of the deposits does not apply in this case. The Tenant's security and pet damage deposit are not doubled.

As the Landlord's monetary claim is partially successful, I find the Landlord is entitled to retain $582.51 from the Tenant's security deposit under section 72 of the Act.

As the Landlord was not awarded the full amount of the Tenant's security and pet damage deposits, I find the Tenant is entitled to a monetary order for the return of the remaining balance of the security deposit, the full amount of the pet damage deposit, plus interest, under sections 38 and 67 of the Act. The value of the Tenant's monetary order is calculated in the conclusion below.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I find the Landlord is entitled to a monetary award of $582.51 for cleaning of the rental unit, and replacement of the light bulbs in the rental unit. I Order the Landlord to retain **$582.51** from the Tenant's security deposit in full and final satisfaction of this Award.

I grant the Tenant a Monetary Order of **$2665.15** for the return of the remaining balance of their security and pet damage deposits, plus interest. The Tenant must serve the Landlord with this Order as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the small claims division of the Provincial Court of British Columbia.

Monetary Issue	**Granted Amount**
Tenant's security and pet damage deposit, plus interest	$3247.66
Landlord's monetary award under section 67 of the Act	-$582.51
Filing fees – $100.00 awarded to both Landlord and Tenant = $0.00	$0.00
Total Amount returned to Tenant	**$2665.15**

The Landlord's claim for recovery of the cost associated with the repair or replacement of the flooring in the rental unit is dismissed, with leave to reapply.

All other claims of the Landlord and Tenant before me are conclusively decided in this decision.

The Landlord is not entitled to continue to withhold the security or pet damage deposits for any future claims, as this issue has been determined in this decision. The Landlord must comply with the Monetary Order and return the amount listed above to the Tenant as ordered.

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: January 20, 2025

Residential Tenancy Branch