



DECISION

Introduction

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

- a Monetary Order 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

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

- a Monetary Order for compensation for monetary loss other money owed under the Act, regulation, or tenancy agreement under section 67 of the Act
- for the return of the Tenant's security deposit under section 38 of the Act

Both parties appeared and are noted on the covering page of this Decision.

Preliminary matters

This matter commenced on November 29, 2024, and was adjourned to give both parties a fair opportunity to be heard. The interim decision should be read in conjunction with this Decision.

The Tenant's in their application were seeking \$6,800.00 which they listed in their application for illegal entry and verbal harassment. The Tenants were required to provide a detail summary of the allegations they identified in their application and provide a detailed calculation as to how they arrived at this amount with supporting evidence.

The Tenants filed a monetary worksheet that states distribution of client meetings for three month period, \$6,000.00 plus GST. I find the Tenants did not comply with my Order and this was not an issue listed in the application. Further, even if there was noise from work being done at the premises. The Tenant PS should have mitigated their loss by working from another location. Therefore, I decline to hear this matter. I dismiss this portion of the Tenant's claim without leave to reapply.

The Tenant's application for return of the security deposit will be addressed later in this Decision.

The Tenant confirmed that they received the Landlord's amendment and evidence on January 8, 2025. The Landlord provided an email showing what was sent and it only shows one photograph was sent of the carpets. The Landlord stated that they did serve the other photographs as they had personally served the Tenant G.V on November 21, 2024. As G.V did not attend the hearing. I accept that the prior photographs were given to the Tenants on November 21, 2023.

The Landlord stated that they did not receive any documents as stated in the interim decision until January 15, 2025. I find the Tenants did not comply my interim Decision. However, the Landlord was prepared to have the Tenant's evidence reviewed.

Issues to be Decided

Is the landlord entitled to monetary compensation for cleaning and damages?
Should either party be entitled to the security deposit?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2023. Rent in the amount of \$3,700.00 was payable on the first of each month. The Tenant paid a security deposit of \$1,800.00. The tenancy ended on August 31, 2024. The security deposit has incurred interest of \$86.12 as of January 30, 2025.

The parties agreed that a move-in and move-out condition inspection report was not completed. The Landlord acknowledge that they had the Tenants forwarding address on August 31, 2024. The Landlord filed their application claiming against the security deposit on September 14, 2024, which was within 15 days of the tenancy ending as required the Act.

Although the Landlord has breached the Act, by failing to conduct a move-in and move-out condition report and extinguished their right to claim against the security deposit for damages; however, the Landlord is entitled to claim other relief such as cleaning cost, which is not considered damage, against the security deposit. Therefore, as the Landlord claim was made within 15 days, I do not need to consider the doubling provision under section 38 (6)(b) of the Act does not apply.

Landlord's application

The landlord claims as follows:

a.	Replace carpet with laminate	\$ 3,000.00
b.	Painting and wall repair	\$ 1,500.00
c.	Cleaning	\$ 300.00
d.	Taxes on invoice	\$ 240.00
g.	Filing fee	\$ 100.00
	Total claimed	\$5,140.00

Replace carpet with laminate

The Landlord testified that the carpets were in good condition at the start of the tenancy, other than some minor stains. The Landlord stated that during the tenancy the Tenants were told that they needed to properly care for the carpets as they were eating, sleeping, and wearing their shoes. The Landlord stated that the Tenants made no attempt to have the carpets cleaned and they were heavily stained with dirt and food.

The Landlord stated they tried to have the carpets cleaned but they were so soiled that they could not. The Landlord stated as a result that they replaced the carpet with laminate flooring as it easy to care for. The Landlord stated that they do not know the age of the carpet as the carpet was there when the purchased the property in 2021.

The tenant testified that there were eight people living in the rental unit and they would sweep the carpet at night before they slept on the floor. The Tenant stated that they did not attempt to steam clean or shampoo the carpets at the end of the tenancy. However, they should not be responsible to replace the flooring as this is an enhancement to the property and it would be unfair for them to have to pay for improvements.

Painting and wall repair

The Landlord testified the walls were scuffed, stained with something black and there were handprints everywhere on the walls. The kitchen walls also had food stains. The Landlord stated that they also had to paint the kitchen cupboards as they were in bad condition. The Landlord stated that they do not know when the rental unit was last painted, and they have not painted the rental unit since they took possession of the property in 2021.

The Tenant testified that the rental unit paint was not in good condition as the walls were scuffed and stained when they moved into the premises. The Tenant stated they may have had some stains around their garbage can; however, that could have been cleaned.

Cleaning

The Landlord testified that the rental unit was not left reasonably clean. The Landlord stated that the bathroom was extremely dirty, there was mould and there was urine all over the toilet and floor and there was a fly infestation due to that. The Landlord stated that the stove was dirty, the refrigerator was not clean and there was food left behind and they had to remove garbage. The Landlord seeks to recover the \$300.00 for cleaning.

The Tenant testified that they cleaned until 7 or 8 pm. The Tenant stated that they did miss cleaning items as they were not on good terms with the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Replace carpet with laminate

I accept the Tenants breached the Act, when they failed to leave the carpets reasonably clean as required by the Act at the end of the tenancy and they did not attempt to steam clean or shampoo. However, I do not have a move-in condition report which would support the condition of the carpets at the start of the tenancy.

Further, even if I accept the carpets required to be replaced, the Tenants would only be responsible to pay the depreciated value of the carpet as the age of the carpet must be considered to determine the value that the Tenants would be responsible to pay. Residential Tenancy Policy Guideline (PG) 40, sets out the useful life of a building element. The Tenants would not be responsible for the full cost of new flooring or improved flooring.

As the age of the carpet was unknown by the Landlord at the time of replacement. I have no way to determine if the carpet had exceeded its useful lifespan of 10 years. Therefore, I dismiss the Landlord's claim for the replacement of the carpet.

Painting and wall repair

The Landlord did not do a move-in condition inspection report with the Tenants to prove the condition of the rental unit at the start of the tenancy. The Tenant denies all the scuff marks were caused by them. I find without a move-in condition inspection report that the Landlord has failed to provide sufficient evidence. Further, the Landlord does not know when the rental unit was previously painted as it has not been painted since they took possession approximately three years earlier 2021. PG 40 provides a useful life span of four years for interior paint. I find it more likely than not the paint was past its useful life span and the Tenants would not be responsible for painting. Therefore, I dismiss this portion of the Landlord's claim.

Cleaning

I accept that the parties may have had a bad relationship at the end of the tenancy; I accept the evidence of the Tenant that had missed cleaning items due to this relationship; however, that does not excuse the Tenants from meeting their obligations under the Act to ensure the rental unit was left reasonably clean. I find the Tenants breached the Act when they failed to leave the rental unit reasonably clean. I find the Landlord cleaning cost of \$300.00 is reasonable. Therefore, I find the Tenants owe the Landlord \$300.00.

I find that the Landlord has established a total monetary claim of **\$400.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the Landlord to retain the amount of \$400.00 from security deposit of **\$1,800.00 and interest of \$86.12** full satisfaction of the claim and I grant the Tenants a monetary order for the balance due of their security deposit and interest in the amount of \$1,486.12, under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **Landlord is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The Landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The Tenants' application for compensation for monetary loss or other money owed is dismissed without leave to reapply. The Tenants are granted a formal order for the balance due of their security deposit.

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 30, 2025

Residential Tenancy Branch