

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 damage to the rental unit or common areas under sections 32 and 67 of the Act
- 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenant's 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)

The Tenant testified that she received the Proceeding Package from the Landlord and had sufficient time to review it.

The Landlord testified that she received the Proceeding Package from the Residential Tenancy Branch.

I find the Tenant was served in accordance with section 89 of the Act, and the Landlord was served in accordance with section 71 of the Act.

Service of Evidence

The Tenant testified that she received the evidence from the Landlord.

The Landlord testified that she received the evidence from the Tenant.

I find the Tenant and the Landlord were served with the evidence in accordance with section 88 of the Act.

Issues to be Decided

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

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 deposit?

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

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

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

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.

The Tenant and the Landlord agreed that this tenancy began on August 1, 2024, with a monthly rent of \$1,100.00, due on the first of the month, and a security deposit in the amount of \$550.00. The Tenant testified that the Landlord had not returned her security deposit, while the Landlord testified that she had returned \$301.35 of the security deposit by cheque, but the cheque had not been cashed by the Tenant.

The Landlord testified that a move in inspection was conducted and a copy of the completed move in condition report was provided to the Tenant. However, the Landlord noted that a move out inspection was not conducted as the Tenant left on September 27, 2024, earlier than discussed end of tenancy of September 30, 2024, and did not inform the Landlord before doing so. However, the Landlord conducted a move out inspection on her own after the Tenant had left, which she submitted as evidence. No evidence was provided by the Landlord to indicate that further opportunities to conduct a move out inspection were offered to the Tenant.

The Tenant testified that the move in inspection was a cleanliness inspection and not regarding the state of the unit. The Tenant also stated that she was unable to get a hold of the Landlord when she was moving out of the unit, which is why she did not communicate the date that she would be vacating the unit.

The Landlord testified that she received the forwarding address from the Tenant via email in the middle of October 2024. The Tenant stated that the exact date she sent the forwarding address to the Landlord was October 18, 2024. The Tenant submitted the October 18, 2024 email as evidence to confirm this. According to the Residential Tenancy Branch's records, the Landlord applied for dispute resolution on October 28, 2024.

The Landlord stated that she sent the Tenant \$301.35 of the security deposit on October 21, 2024, in the form of a cheque via registered mail. The Landlord submitted the copy of a cheque in the amount of \$301.35 as evidence, which was dated October 21, 2024. The Tenant confirmed that she had received the cheque but explained that she did not cash it as she did not agree with the deductions made and the amount of the security deposit withheld by the Landlord.

The Landlord testified that she made deductions in the security deposit as damage had been done by the Tenant to the unit. She stated that there were stickers on the walls when the Tenant moved in and she had informed the Tenant to not take these off as removing them would damage the drywall. However, the Landlord testified that the Tenant took off the stickers and caused damage as a result.

The Landlord testified that stickers were removed from the bedroom, the bathroom and above the window in the living room. The Landlord provided pictures in support of her testimony, which showed some white patches in the areas that the Landlord claimed to be affected.

The Landlord further testified that the Tenant added shelves to the unit, which when removed, left around 16 holes in the drywall. The Landlord also provided picture evidence, which showed 8 holes in the dry wall where one of the shelves had been removed.

The Landlord also submitted a picture of a bed with a mattress cover as evidence, testifying that the mattress cover provided as part of the tenancy agreement was missing at the end of the tenancy. In addition, the Landlord stated that the Tenant had failed to defrost the fridge to leave it in the same state as when the Tenant had moved into the unit.

The Landlord testified that the painter quoted her \$350.00 to fill the patches and holes, sand, and paint the walls. However, the Landlord stated that she only wanted the Tenant to pay 200.00 from the total amount quoted by the painter. The Landlord submitted a breakdown of the damages by the Tenant and cost to repair as follows:

- Repair and re-painting of damaged walls - \$200.00
- Defrosting/cleaning and moving fridge - \$20.00
- Replacing mattress cover - \$30.00

The Landlord therefore deducted \$250.00 from the Tenant's security deposit of \$550.00, and also added an interest amount of \$1.35, to return \$301.35.

The Landlord confirmed that her application for a Monetary Order for damage to the rental unit or common areas, and her application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, are in relation to the same damages, for a total of \$250.00.

The Tenant stated that during a verbal conversation, the Landlord had given her permission to take off the stickers carefully. The Tenant further added that the Landlord had informed her that she had previously tried to remove some of the stickers. As such, the Tenant testified that some of the damage to the drywall was from before the Tenant moved in. The Tenant stated that she removed two or three of the bathroom stickers while some had been removed previously. She also stated that she had not taken off any stickers from above the window in the living room.

The Tenant also testified that she asked the Landlord if she could install shelves, and the Landlord gave her permission to do so. She provided screenshots of her text message conversation with the Landlord from August 20, 2024, which demonstrated that the Landlord did not want to pay for the shelves that the Tenant wanted. The Tenant stated that she therefore paid for the shelves herself. She agreed that removing the shelves left holes in the walls and explained that she did not patch these as she did not have pliers to pull out the screws and did not want to cause further damage to the walls.

The Tenant also stated that she had filled out and sanded the other holes in the unit. She stated that she had also offered various options to the Landlord via text message for how to deal with the damage to the walls. She said that she offered to add new stickers, offered to spot paint wherever there was damage due to the stickers and holes, or offered to leave the unit as is so that the Landlord could have all of it painted once she removed her furniture. The Tenant noted that the Landlord never responded to her text message. The Tenant provided a screenshot of this text to the Landlord, sent on September 26, 2024.

The Landlord agreed that she had not responded to the Tenant's text message but added that she assumed that it was the Tenant's responsibility to leave the unit in a good condition.

The Tenant stated that at the beginning of the tenancy, the Landlord had told her that the unit needed to be painted. The Tenant explained that with the lack of a response from the Landlord at the end of the tenancy, she was not sure how to proceed regarding whether she should paint the unit or not.

The Tenant added that the Landlord never discussed with her that the fridge needed to be defrosted. She agreed that the fridge was defrosted when she got the unit but stated that she had just cleaned the fridge for when she vacated the unit.

Analysis

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

Under section 67 of the *Residential Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of compensation that is due and order that the responsible party pay compensation to the other party.

Policy Guideline 16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I found the Landlord to be credible and accept her evidence that damage was caused to the walls by the Tenant due to the removal of shelves and the peeling of stickers. However, I also found the Tenant to be credible, and I accept her evidence that not all the damage visible in the pictures provided by the Landlord was caused by her. Moreover, the Tenant was able to establish, from her September 26, 2024 text message to the Landlord, that she presented various options to the Landlord for how she could reduce the damage that existed. Both the Tenant and the Landlord agreed that the Landlord failed to reply to the Tenant. In doing so, I find that the Landlord failed to act reasonably to minimize the damage.

I also accept the Tenant's evidence that the Landlord never communicated that she expected the fridge be defrosted and that the Landlord stated that the unit was due for painting. I further accept the Landlord's evidence that the mattress cover was missing.

In considering the evidence of both parties, including the role the Tenant played in damaging the unit and the role the Landlord played in failing to reasonably minimize the damage, I find that the Tenant should compensate the Landlord for the following:

- 25% for repair and re-painting of damaged walls – 25% of \$350.00 = \$87.50
- 0% for defrosting/cleaning and moving fridge – 0% of \$20.00 = \$0.00
- 100 % for replacing mattress cover – 100% of \$30.00 = \$30.00

I therefore find that the Landlord is entitled to a Monetary Order in the amount of \$117.50, for the damage to the rental unit or common areas caused by the Tenant.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit?
Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?**

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.

I accept the Tenant's evidence that she sent the forwarding address to the Landlord on October 18, 2024. In accordance with section 44 of the Residential Tenancy Regulation, the forwarding address is therefore deemed to have been received by the Landlord on October 21, 2024. The Residential Tenancy Branch's records show that the Landlord applied for dispute resolution on October 28, 2024. Therefore, I find that the Landlord made their application within 15 days of the forwarding address being provided.

In accordance with section 38 of the Act, I authorize the Landlord to retain \$117.50 in full satisfaction of the Monetary Order.

Accordingly, I find the Tenant is entitled to a Monetary Order for the return of a portion of their security deposit (\$432.50) plus interest (\$6.39) under sections 38 and 67 of the Act, in the amount of \$438.89.

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 Tenant?

As both the Landlord and the Tenant were partially successful in their applications, I find that neither is entitled to recover the \$100.00 filing fee paid for their applications under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$438.89** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit (plus interest) under sections 38 and 67 of the Act	\$438.89
Total Amount	\$438.89

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) 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: January 29, 2025

Residential Tenancy Branch