

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Tenant and the Landlords under the *Residential Tenancy Act* (the Act). The Tenant's Application for Dispute Resolution, filed on November 15, 2024 (the Application), is for:

- A Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Authorization to recover the filing fee for the Application from the Landlords under section 72 of the Act

The Landlords' Application for Dispute Resolution, filed on December 17, 2024 (the Cross Application), is for:

- A Monetary Order for unpaid rent under section 67 of the Act
- A Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under sections 37 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 the Cross-Application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Agent for the Landlords, G.S. (the Landlord) acknowledged receipt of the Proceeding Package, including the Tenant's evidence in support of the Application, from the Tenant and raised no concerns regarding service. The Landlord confirmed he had sufficient time to review the Tenant's evidence prior to the hearing. Therefore, I find the Proceeding Package and the Tenant's evidence in support of the Application was duly served to the Landlords in accordance with the Act.

The Tenant acknowledged receipt of the Proceeding Package for the Cross Application, including the documentary evidence submitted by the Landlords, and raised no concerns regarding this service. The Tenant confirmed she had sufficient time to review the Landlords' evidence prior to the hearing. Therefore, I find the Proceeding Package

and the Landlords' documentary evidence in support of the Cross Application was duly served to the Tenant in accordance with the Act.

During the hearing, the Tenant referred to evidence she submitted in response to the Cross Application that the Landlord stated he had not received. The Tenant states she delivered these documents to the Landlords four days prior to the hearing. The Tenant agreed to email these documents to the Landlord during the hearing and the Landlord confirmed receipt during the hearing. Therefore, I find the Tenant's late evidence was sufficiently served to the Landlords under section 72(1)(c) of the Act.

During the hearing, the Landlord referred to video footage that the Tenant states she did not receive from the Landlords in advance of the hearing. No explanation was provided regarding when or how the video was served to the Tenant. I therefore find the video was not served in accordance with the Act and I have excluded it on this basis.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for the cost of emergency repairs to the rental unit?

Is the Tenant entitled to a Monetary Order for compensation for damage or loss?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Did the Tenant leave the rental unit reasonably clean and undamaged except for reasonable wear and tear?

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit?

Are either the Tenant or the Landlords entitled to recover the filing fee for the Application or the Cross Application from the other party?

Background and Evidence

I have reviewed all admissible evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agree this tenancy started May 1, 2021, with a monthly rent of \$975.00, due on the first day of the month. The Tenant paid a combined pet and security damage deposit of \$550.00 on May 1, which the Landlords hold in trust. The tenancy ended on October 25, 2024, when the Tenant vacated the rental unit.

It is undisputed that no move-in or move-out condition inspections were completed at the start or the end of the tenancy. The Tenant testified that the Landlords never invited her to participate in either a move-in or move-out inspection and this was not disputed by the Landlord.

The Landlord states the Tenant's forwarding address was not received until the Landlords were served with the Proceeding Package on November 25, 2024. The Tenant confirmed she has not otherwise sent the Landlords her forwarding address in writing.

The Tenant's testimony is that there were issues with the rental unit that required repair when she first moved in. The Tenant states there were holes in the walls and marks on the baseboards from the prior occupants. The Tenant also says the plumbing fixtures were loose before she moved in. The Tenant also testified that, during the tenancy, she had problems with the fridge and freezer that caused spoilage of her food and that there were frequent problems with the plumbing in the rental unit. The Tenant says the Landlords told her they would fix these problems, but they never did.

The Tenant is requesting compensation in the amount of \$2,000.00 for unspecified emergency repairs. The Tenant is also claiming compensation in the amount of \$1,000.00 per month for two years due to unsafe living conditions, the Landlords' lack of responsiveness to essential maintenance issues, bullying, verbal abuse, and failing to respect and protect the Tenant's privacy.

The Tenant's evidence includes her written records of home repair costs she states she incurred during the tenancy. A written summary dated June 2021 lists baseboards and molding, plumbing parts, door locks, a smoke alarm battery, plumbing service, value of spoiled groceries and a temporary freezer seal totaling \$1,362.35.

Another written summary dated August 11 to September 2022, includes a plumbing inspection, purchase of plumbing parts and items to seal the bathroom and kitchen faucets, two door locks and materials to seal the fridge totaling \$1,084.26. A written note at the bottom of this document says the total cost between May 2021 and September 2024 is \$2,446.00. The Tenant testified that she kept the actual receipts for these expenses for a while but was not able to find them prior to the hearing.

The Tenant's evidence also includes an invoice from September 2024 for \$1,376.48 to repair five broken car windows. The Tenant states her car windows were smashed while her car was parked outside the rental unit and that the Landlords refused to provide video footage from their cameras of the incident. The Tenant's testimony and written statement was that the Landlords' son had revealed her whereabouts to her ex-partner. The Tenant's written statement also says the Landlords' son did nothing to help her when he witnessed the Tenant's ex-partner assault her on September 19. The Tenant also states the Landlords tampered with her mail during the tenancy.

The Landlord states the Tenant never requested the Landlords repair the issues now being raised during the tenancy, nor did she file any disputes with the RTB to have these issues dealt with before the tenancy ended. The Landlord could not speak to the Tenant's allegations regarding any interactions with the Tenant's ex-partner or her broken car windows. The Landlord states these matters are unrelated to the tenancy, not covered by the Act, and more properly addressed in a civil claim.

The Landlords are claiming \$975.00 for unpaid rent for October 2024. The Landlord states the Tenant did not give proper notice she would be moving out on October 25. Instead, she just vacated the rental unit on that day. The Tenant admits she did not pay rent for the month of October, but states in August she gave the Landlords notice she would be out by the end of October. The Landlords' evidence includes text message correspondence with the Tenant dated August 29 in which the Tenant states "I am moving October 31, 2024."

The Landlords are claiming \$109.82 for plumbing fixtures that they had to replace after the Tenant moved out. The Landlord testified that the faucets were intact when the Tenant moved in and damaged after the Tenant moved out. The Landlords have submitted a photo of a receipt from Home Hardware showing the cost of two new faucets. To the best of the Landlord's knowledge, the plumbing fixtures in the rental unit when the Tenant moved out were the originals from when the rental unit was constructed in 2009.

The Landlords are claiming \$1,155.00 for painting of the rental unit after the Tenant moved out and have submitted an invoice from a painting company. The Landlord did not know when the rental unit was last painted, but stated that, to the best of his knowledge, it was before the Tenant moved into the rental unit in May 2021. The Tenant testified the rental unit was not freshly painted when she moved in and that it was not painted during the tenancy.

The Landlords are claiming \$598.50 for junk removal expenses after the Tenant vacated the rental unit. The Landlords have submitted an invoice from a bulk carriers company for unspecified junk removal as well as photographs of items they say were left in the rental unit by the Tenant.

The Tenant testified that she had tried to sell the larger items, but only for a nominal amount because she was just trying to get rid of them so she would not have to move the items. The Tenant states she found someone to purchase the China cabinet and bed frame for approximately \$80.00, but the buyer was intimidated by the Landlords when he tried to collect the items, so the Tenant ended up returning his money. The Tenant says another person was going to buy the couch for a nominal amount, but that sale fell through. The photographs submitted into evidence by the Landlord show other miscellaneous items in closets, cupboards and under the sink, which the Tenant did not address in her testimony or response.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In an application for compensation for damage or loss, the party claiming the damage or loss bears the burden of proof.

Is the Tenant entitled to a Monetary Order for the cost of emergency repairs to the rental unit?

Section 33(3) of the Act allows a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time and the tenant has made at least two attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs.

Section 33(1) of the Act defines emergency repairs as those that are urgent, necessary for the safety of anyone or for the preservation or use of residential property, and for the purpose of repairing:

- Major leaks in pipes or roof
- Damaged or blocked water or sewer pipes or plumbing fixtures
- The primary heating system
- Damaged or defective locks that give access to a rental unit
- Electrical systems
- In prescribed circumstances, a rental unit or residential property

Where a tenant is seeking a monetary order for the cost of emergency repairs they completed, they bear the burden to prove that the repairs were emergency in nature, that the landlord was notified of the emergency repair in accordance with the Act, and the amount of reimbursement being claimed.

The Tenant's testimony referred to clogged drains, loose plumbing fixtures, the need to purchase door locks and problems with the refrigerator leading to the spoilage of food. The Tenant has provided written summaries of the amounts she spent to repair these issues herself, but no receipts are provided.

The Tenant also did not provide any evidence or testimony to demonstrate why the repairs were urgent and necessary, or to establish that she called the Landlords on two occasions regarding the required repairs before undertaking the repairs herself.

Based on the evidence and submissions before me, I am not satisfied that the repairs were emergency as that term is defined in the Act. Nor am I satisfied that the Tenant took the steps set out in the Act that would entitle her to be reimbursed for the expenses she is now claiming for the repairs, more than two years later.

For the above reasons, the Tenant's application for a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for compensation for damage or loss?

To be awarded compensation for a breach of the Act, the Tenant must prove, that it is more probable than not, that:

- The Landlords failed to comply with the Act, regulation or tenancy agreement
- Loss or damage resulted from the Landlords' failure to comply
- The amount of or value of the damage or loss
- The Tenant acted reasonably to minimize that damage or loss

Section 2 of the Act limits its application to tenancy agreements, rental units and other residential property. I find that the Tenant's concerns regarding bullying and verbal abuse by the Landlords, their failure to protect her privacy, and her car windows being smashed are not matters that relate to the tenancy and are not covered under the Act.

The Tenant's claim for compensation relating to the Landlords failure to provide and maintain the rental unit in a condition that complies with health, safety and housing standards required by law and makes it suitable for occupation relates to the Landlords' obligations under section 32(1) of the Act. However, I find the Tenant has not provided sufficient evidence to show that the Landlords breached health and safety standards required by law or that the rental unit was not suitable for occupation.

Additionally, the Tenant should have raised her concerns regarding the condition of the rental unit and required repairs during the tenancy by requesting in writing that the Landlords complete the repairs when the problem occurred. If the issues were not properly addressed or repaired by the Landlords in a reasonable time, the Tenant's recourse was to bring an application for dispute resolution to the RTB for the repairs. I find that the Tenant did not take these steps during the tenancy and, therefore, failed to minimize any damage or losses resulting from the Landlords' alleged failure to fulfill their obligations under section 32 of the Act.

Based on the testimony of the parties, and on a balance of probabilities, I therefore find that the Tenant has not provided sufficient evidence of the Landlords failures to comply with the Act, regulation or tenancy agreement, or that any loss or damage resulted from the alleged failures to comply.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under section 67 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

It is undisputed that monthly rent of \$975.00 was due on the first day of the month, that the Tenant did not pay rent for October 2024, and that the Tenant resided in the rental unit until October 25. Based on these undisputed facts, I find that the Landlords have established a claim for unpaid rent of \$975.00 owing for the month of October.

As I have dismissed the Tenant's claim relating to the cost of emergency repairs, I am satisfied that the Tenant did not have a legal right to deduct any amounts from the rent due for October 2024.

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. I therefore find the Landlord is entitled to a monetary award for unpaid rent in the amount of \$975.00.

I allow the Landlords to retain the Tenants' security and pet damage deposit of \$550.00, plus interest of \$26.47, in partial satisfaction of the monetary award under section 72(2)(b) of the Act. Therefore, I find the Landlords are entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$398.53.

Did the Tenant leave the rental unit reasonably clean and undamaged except for reasonable wear and tear?

For the Cross Application, the onus is on the Landlords as applicant to prove on the balance of probabilities that the Tenant did not comply with section 37(2)(a) of the Act, which requires the rental unit be left in a reasonably clean and undamaged condition, except for reasonable wear and tear.

A tenant's obligations under section 37(2)(a) of the Act and what constitutes "reasonable wear and tear" are further explained in Policy Guideline #1 which states:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site... Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

To be awarded compensation, the Landlord must prove it is more probable than not that:

- The Tenant failed to comply with the Act, regulation or tenancy agreement
- Loss or damage resulted from the failure to comply
- The amount of or value of the damage or loss
- The Landlord acted reasonably to minimize that damage or loss

I will address each of the items claimed by the Landlords in turn.

Plumbing Fixtures

Policy Guideline #40 provides guidance in determining awards for damages based on the useful life of building elements. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. Policy Guideline #40 states that the useful life of faucets is 15 years.

Based on the evidence and submissions before me, I find the faucets in the rental unit were the originally installed faucets from 2009, when the building was constructed. Therefore, at the end of the tenancy in October 2024, the faucets were 15 years old and had therefore reached or surpassed their useful life. Furthermore, in the absence of a move-in or move-out condition inspection report, I accept the Tenant's testimony that the faucets required repair or replacement prior to the start of the tenancy.

I find the Landlords have not proven any damage to the faucets beyond reasonable wear and tear. I therefore dismiss this portion of the Landlords' claim for compensation.

Painting

Policy Guideline #1 provides guidance for the landlord and tenant responsibilities regarding painting as follows:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Policy Guideline #40 provides that four years is a reasonable time before the interior of a rental unit would require repainting.

I accept the Tenant's testimony that the rental unit was not freshly painted when she moved into the rental unit in May 2021. As the tenancy lasted almost 3.5 years, the useful life of interior paint is four years, and in the absence of any condition inspection reports, I find that the Landlords have failed to establish that the need to repaint the rental unit was caused by anything beyond reasonable wear and tear. I therefore dismiss this portion of the Landlords' claim for compensation.

Junk Removal

Section 24(1) of the *Residential Tenancy Regulation* (the Regulation) states that a landlord may consider a tenant has abandoned personal property if the personal property is left behind after the tenant has vacated the rental unit after the tenancy has ended. When personal property is abandoned, a landlord may remove the personal

property but is required to deal with the property in accordance with Part 5 of the Regulation.

In particular, section 25(2) of the Regulation permits a landlord to dispose of abandoned property in a commercially reasonable manner if the landlord believes the fair market value of the property to be less than \$500.00, or if the cost of removing, storing and selling the property would be more than the proceeds of its sale.

Based on the evidence and testimony of the parties, I am satisfied that the Tenant left a number of miscellaneous items in the rental unit when she moved out, including a couch, a bed frame and a China cabinet. Based on the Tenant's testimony that she tried to sell the larger items for nominal amounts to get rid of them, and based on the photographs submitted into evidence by the Landlords, I am satisfied that the cumulative value of the Tenant's abandoned property was less than \$500.00. I am also satisfied that the Landlords reasonably believed the cost of removing, storing and selling the items would not net any sale proceeds.

For the above reasons, I find that the Landlords acted reasonably in paying for the removal and disposal of the items the Tenant abandoned in the rental unit. I further find that the Landlords have established that the Tenant's failure to remove all her belongings from the rental unit at the end of the tenancy constituted a failure to comply with section 37(2)(a) that requires the rental unit be left reasonably clean.

I am satisfied that the value of the Landlords' loss with regards to removal of the Tenant's property was the \$598.50 paid to the bulk carriers. Therefore, I find the Landlords are entitled to a Monetary Order for compensation for damage or loss under sections 37 and 67 of the Act, in the amount of \$598.50.

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit?

As I have found the Tenant's security and pet damage deposits are to be applied towards the unpaid rent for the month of October 2024, I find it is not necessary to analyze this portion of the Cross Application.

Are either the Tenant or the Landlords entitled to recover the filing fee for the Application or the Cross Application from the other party?

As the Tenant was not successful, their request to recover the \$100.00 filing fee paid for the Application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

As the Landlords were partially successful, I grant their request to recover the \$100.00 filing fee paid for the Cross Application from the Tenant under section 72 of the Act.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$1,097.03** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under section 67 of the Act	\$975.00
A Monetary Order for compensation for damage or loss under sections 37 and 67 of the Act	\$598.50
Authorization to recover the filing fee for the Cross Application from the Tenant under section 72 of the Act	\$100.00
Authorization to retain the Tenant's security and pet damage deposits in partial satisfaction of the Monetary Order for unpaid rent under section 72 of the Act	-\$550.00
Amount of interest owed on security and pet damage deposits from May 1, 2021 to the date of this Order	-\$26.47
Total Amount	\$1,097.03

The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Tenant's Application for a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act is dismissed, without leave to reapply.

The Tenant's application for a Monetary Order for compensation for damage or loss under section 67 of the Act is dismissed, without leave to reapply.

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: February 5, 2025

Residential Tenancy Branch