



DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Landlord's application for:

- a Monetary Order of \$820.00 for damage to the rental unit or common areas under sections 32 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 this application from the Tenant under section 72 of the Act

And the Tenant's application for:

- a Monetary Order for the return of all 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

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

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

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters

At the outset the Tenant provided their full legal name as listed on the Tenancy Agreement (TA) and their application for dispute resolution.

Based on the above testimony, the TA, and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.12, I amended the Landlord's application to include the full legal name of the Tenant.

Both parties confirmed that PP, the named Landlord on the TA, is the spouse of Landlord AM. Both parties agreed to and accepted AM as the correctly named Landlord for the disputes and applications before me.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas, and for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Is the Landlord entitled 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, or is the Tenant entitled to the return of the security deposit that the Landlord is retaining without cause?

Is the Landlord entitled to recover the filing fee?

Is the Tenant entitled to recover the filing fee?

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.

Both parties agreed that this tenancy began on July 15, 2023, and ended on November 30, 2024. The monthly rent of \$2,300.00 was due on the first day of each month. On July 1, 2023, the Tenant paid a security deposit of \$1,150.00, which the Landlord continues to hold in trust.

The parties did not complete a move-in Condition Inspection Report (CIR) or a move-out CIR. The Tenant stated that on December 4, 2024, they provided their forwarding address in writing to the Landlord by leaving a copy in the mailbox of the Landlord. The Landlord testified that on December 6, 2024, they received the Tenant's forwarding address.

The Landlord is seeking a monetary order as follows:

Item 1 – \$120.00, for the cost of paint and supplies for water damage to the baseboard. Family Member RM for the Landlord testified that a few weeks prior to the end of the tenancy, the Tenant informed the Landlord of a leak from the kitchen sink. FM stated that there was water damage to the flooring and baseboards in the kitchen, living room and hallway of the rental unit. FM stated that the ongoing leak caused water damage,

which included bubbled areas on the flooring. FM stated that the rental unit was newly renovated at the start of the tenancy. The Landlord submitted photographs as part of their documentary evidence.

FM testified that the Landlord has handyman experience and proceeded to fix the damage. The Landlord testified that once they were contacted by the Tenant they immediately shut off the water. The Landlord placed a fan to address the issue during the tenancy and painted the baseboards once the Tenants moved out of the rental unit. The Landlord is seeking \$120.00 for the cost of paint and supplies.

Item 2 - \$400.00, for painting and labour costs. FM stated that the Landlord took a full day off from work and completed repairs related to Item 1. FM stated the Landlord completed two layers each of primer and paint. The Landlord is seeking an estimated amount of \$400.00.

Item 3 - \$300.00, for cleaning costs (two people x 4 hours). FM testified that the rental unit was left in a dirty and unreasonable condition. FM stated there was dust and dirt in the rental unit. FM stated the bathroom sink was stained, and the counter, shower and flooring were dirty. The windows, baseboards and kitchen were not cleaned. The Landlord submitted photographs as part of their documentary evidence.

The Tenant testified that the leak occurred behind the drywall, directly under the kitchen sink. The Tenant stated that the leak or issue was not visible and only detected once the drywall was removed.

The Tenant stated that they did not detect any issue or leakage until November 13, 2024, at which time they immediately informed the Landlord of this issue. The Tenant testified that after a two-hour period, the Landlord assessed the leakage. The Tenant stated that the Landlord removed the drywall, found the leakage, turned off the water and stated that they would order a missing part.

The Tenant testified that they agreed not to use the kitchen sink for the next three to four hour period. The Tenant stated that later on the same date the Landlord added the missing part. The Tenant stated that no further action was taken, nor was there any further communication on the matter until November 26, 2024.

The Tenant stated that they cleaned most of the rental unit prior to returning keys to the Landlord. The Tenant stated that the Landlord's spouse attended for an inspection and asked for a deep cleaning based on their high standards of cleaning.

The Tenant testified that they did not clean one bathroom, two cabinets and one side of their child's bedroom.

Analysis

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas, and for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for compensation for damage or loss under the Act, regulation or tenancy agreement as follows:

- \$300.00, for cleaning costs. Based on the testimony, documentary and video evidence before me, I find the Landlord substantiated their claim for cleaning costs. I find the Tenant violated section 37 of the Act, which states when a tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I accept FM's testimony that two individuals cleaned the rental unit over a four hour period. I find it reasonable to award the claimed amount of \$300.00 for this item.

I decline to award the claimed amount for Item 1 and 2 for the reasons noted below:

I find the Landlord failed to prove that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act, Regulation or tenancy agreement. In this case, as the leak was behind drywall underneath the kitchen sink, I accept the Tenant's testimony that they immediately informed the Landlord when they were aware of the issue. Further, there is no evidence of a plumbing inspection or assessment report which details the timeline or cause of the damage.

Although the Landlord's photograph and video evidence shows stains to the baseboard, they did not complete a move-in CIR or move out CIR, nor did they provide photographs or video footage from the start of the tenancy. I find these claims are not supported due to insufficient evidence.

For the reasons noted above, I dismiss without leave to reapply the Landlord's claim for Item 1 and Item 2.

Are the Landlords entitled to recover the filing fee?

As the Landlord was successful in their application for cleaning costs, I grant the \$100.00 filing fee paid for this application under section 72 of the Act.

The Landlord is entitled to a monetary award in the amount of \$400.00 as follows:

- \$300.00, for cleaning costs,
- \$100.00, for the cost of the filing fee.

Is the Landlord entitled 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, or is the Tenant entitled to the return of the security deposit that the Landlord is retaining without cause?

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 find the forwarding address was provided to the Landlord on December 6, 2024, and the Landlord made their application on December 5, 2024. I find that the Landlord did make their application as required by the Act.

I accept the Landlord did not complete a move-in CIR at the start of the tenancy, or a move-out CIR at the end of the tenancy. While the Landlord extinguished the rights to claim against the security deposit for damages, the security deposit can also be held for other relief, such as cleaning costs.

The \$1,150.00 security deposit has accrued \$44.43 in interest. The Landlord holds the total security deposit of \$1,194.43.

As the Landlord has been granted a monetary award of \$400.00, I authorize the Landlord to deduct this amount from the security deposit held in full satisfaction of the claim.

I order the Landlord to immediately return the balance of the deposits held, or \$794.43, to the Tenant.

Is the Tenant entitled to recover the filing fee?

As the Tenant was successful in their application for the return of a portion of their security deposit, I grant the Tenant the \$100.00 filing fee paid for this application under section 72 of the Act.

The Tenant is entitled to a monetary award in the amount of \$894.43 as follows:

- \$794.43 for the return of their security deposit
- \$100.00 for the cost of the filing fee

Conclusion

I grant the Landlord a monetary award in the amount of \$400.00, which the Landlord may deduct from the security deposit in full satisfaction of the claim.

I order the Landlord to immediately return the balance of the security deposit held, or \$794.43, to the Tenant. I grant the Tenant the \$100.00 filing fee for their application.

To give effect to this above, I grant the Tenant a monetary order in the amount of \$894.43.

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** to be enforceable. Should the Landlord fail to comply with this Order, this Order may be filed in the Provincial Court of British Columbia (Small Claims Court) to be enforced as an order of that 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: February 26, 2025

Residential Tenancy Branch