

## **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 unpaid rent under section 67 of the Act
- a Monetary Order 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

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

- the return of the Tenant's security deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlords AP and MK attended the hearing.

Tenants FF and ZR likewise attended the hearing, along with a translator, HM.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Tenant MRB is deemed served on December 5<sup>th</sup>, 2024, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlord provided a copy of the outgoing e-mail showing the documents were included as attachments to confirm this service. The Landlord also submitted a copy of tenancy agreement which was signed by the Tenant on June 26<sup>th</sup>, 2024, indicating the Tenant agreed to receive documents by e-mail.

I find that Tenant HS is deemed served on December 5<sup>th</sup>, 2024, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlord provided a copy of the outgoing e-mail showing the documents were included as attachments to confirm this service. The Landlord also submitted a copy of tenancy agreement which was signed by the Tenant on June 26<sup>th</sup>, 2024, indicating the Tenant agreed to receive documents by e-mail. The Landlord testified that the email address

given on the tenancy agreement was incorrect, and MRB provided the correct email address for HS on July 8<sup>th</sup>, 2024, after having been asked by the Landlord for his correct email address. The difference between the two addresses is the insertion of three letters. I find that the Tenants intended to provide an email address for service for HS, and the consent to serve via email applies to the correct email address.

## **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for unpaid rent?

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 in partial satisfaction of the monetary award requested? Is the Tenant entitled to the return of their security deposit?

Is the either party entitled to recover the filing fee for this application from the other?

## **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.

Evidence was provided showing that this tenancy began on August 26<sup>th</sup>, 2023, with a monthly rent of \$3,000.00, due on first day of the month, with a security deposit in the amount of \$1,500.00.

AP testified that the Tenants owed an amount for Hydro costs incurred at the end of the tenancy and submitted the relevant bills.

AP testified that, as a result of an incident that occurred while the Tenants were resident in the apartment, he was charged \$3,675.00 by the strata corporation for cleaning up an oil spill, but has not yet paid this amount. AP submitted the letter from the strata corporation charging him for this cleaning, which included two invoices from the cleaning company, which indicate that they cleaned the balconies and railings below unit 1203.

AP testified that, following the end of the tenancy, he had to replace handles on kitchen cabinets where the paint had peeled off. In addition, he testified that the Tenants had caused a dent in the wall of the rental unit, which FF had said he would fix but did not. AP had the walls fixed after the end of the tenancy. He testified that the entire unit had been painted shortly before the tenancy began in 2023.

FF testified that the oil spill was due to edible oil, and they cleaned the spill themselves in the rental unit. They were not told about other costs with respect to the oil spill until after they had moved out. FF submitted that the strata corporation should have notified both himself and the landlord, and he might have been able to remedy the problem.

FF testified that the damage to the wall was minimal – about the size of a quarter, and he argued that the damage to the cabinet doors was due to wear and tear.

## **Analysis**

### **Is the Landlord 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.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid utilities owing for the period of May to August of 2024.

The Landlords submitted the utility bills, and I have verified that the amount claimed reflects the proportional period the tenancy covered. The Tenants did not dispute that they were responsible for the utilities, and I award the Landlords the amount claimed.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$150.74.

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

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.

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

The Tenants did not dispute that they were responsible for a oil spill. I find that the oil spill did affect the outside of the building, and that the Landlords have incurred a debt to the strata corporation for the cleaning required in the common areas of the rental property. While strata procedures may leave something to be desired, the Landlords suffer from the same difficulties as the Tenants in this respect: neither was given an opportunity to mitigate the cost of cleaning up the oil spill. I do not agree that the Landlord is obligated to challenge the strata's charge of the cleaning : such a challenge appears to be without foundation. As the Tenants caused the damage to the common areas of the rental property, I find they are liable for the cost charged to the Landlord.

The Landlords did not submit pictures of the damage to the wall of the rental unit or a final condition inspection report. FF testified that the damage was approximately the size of a quarter. Based on the paucity of evidence, I find that the Landlords have not established that the damage to the walls went beyond ordinary wear and tear. I therefore dismiss the Landlord's claim with respect to damage to the walls.

The Landlord did submit pictures of the damaged handles of the kitchen cabinets, which appear to show significant peeling of the paint or shell of the handles, and some corrosion of the metal underneath. No explanation for how the damage was caused was offered by either party. In my view, having reviewed the photographs, it is quite possible that the kitchen handles were prone to corrosion and flaking under ordinary use, and did so. I therefore find that the Landlord has failed to prove that the Tenant damaged the kitchen cabinet handles.

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.

Therefore, I find the Landlord is entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$3,675.00.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?**

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. If a Landlord fails to do so, they must pay the Tenants double the amount of the deposit. The Tenants provided their forwarding address on October 11<sup>th</sup>, in response to AP's request. RTB records show that while the Landlords began to make their application on October 18<sup>th</sup>, it was saved and not submitted at that time; it was only completed and submitted on November 28<sup>th</sup>. I cannot find that an application is made prior to it being submitted to the RTB, and I therefore find that the Landlords made their application on November 28<sup>th</sup>, after the 15 days had elapsed.

As a consequence, under section 38(6) of the Act, the Landlords are obligated to pay double the amount of the security deposit to the Tenants. Therefore, I find the Tenant is entitled to a Monetary Order for the return of double their security deposit under sections 38 and 67 of the Act, in the amount of \$3,000.00, plus interest.

I note that Policy Guideline 17 indicates that only interest on the original deposit is payable; it is not to be doubled. However, Policy Guidelines are not binding upon me, and in this instance, I find the Guideline to be in error. The term “security deposit” as used in section 38 would make little sense if interest were not considered as part of the security deposit. If interest were excluded from the meaning of security deposit under s.38(6), no interest at all would be payable when the deposit is doubled, even though the Landlord had been obliged to return the deposit with interest under section 38(1), which would be a perplexing result. Moreover, the parallel section 38.1(2) indicates that interest is calculated on an “amount” which is the doubled deposit, not the original deposit.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security damage deposits of \$3,000.00, plus interest, in satisfaction of the monetary award. The interest on the doubled deposit I calculate in accordance with the Regulations to be \$109.82.

**Is the either party entitled to recover the filing fee for this application from the other?**

As each party was substantially successful on their own application, each party would ordinarily be entitled to recover their filing fee; however, the amounts cancel each other out, and each party shall therefore bear their own costs.

**Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$715.92** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid utilities under section 67 of the Act	\$150.74
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	\$3,675.00
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	-\$3,109.82
<b>Total Amount</b>	<b>\$715.92</b>

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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: March 28, 2025

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Residential Tenancy Branch