

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
- 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 Tenant's cross 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

The Landlord H.A, Landlord M.J. attended the hearing for the Landlords. The Tenant G.M attended the hearing for the Tenants.

Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence

The Tenant G.M. testified that they received and reviewed the Landlord's Notice of Dispute Resolution Proceeding and the Landlord's evidence.

Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence

Residential Tenancy Branch Rules of Procedure Rule 3.5 states that the applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with Notice of Dispute Resolution Proceeding and all other associated documents. If the applicant fails to demonstrate, the director may adjourn, dismiss with or without leave.

The Landlord M.J. testified that they did not receive the Tenant's Notice of Dispute Resolution Proceeding.

The Tenant G.M. testified that they served the Tenant's Notice of Dispute Resolution Proceeding on December 22, 2024.

The Notice of Dispute Resolution Proceeding is generated by the Residential Tenancy Branch and provided to applicants after payment of the filing fee.

On review of Residential Tenancy Branch internal records, the Tenant's cross application, their Notice of Dispute Resolution Proceeding, the testimony of the parties, and the filing date of the Tenant's cross application - January 15, 2025, I find that the Tenant G.M. did not provide any meaningful submissions to demonstrate that they served their Notice of Dispute Resolution Proceeding to the Landlord in compliance with section 89 of the Act and Rule 3.15. For example, there is no explanation for how the Tenants were able to serve their Notice on December 22, 2024, prior to the filing of their own application.

Consequently, I dismiss the Tenant's application in its entirety, with leave to reapply. The following issues on the Tenant's application are dismissed, with leave to reapply:

- 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

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 retain all or a portion of the Tenant's security deposit or pet damage deposit?

Is the Landlord 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.

The written tenancy agreement was provided by the Landlords showing that this tenancy began on September 15, 2023, with monthly rent in the amount of \$3,950.00, due on the last day of the month. The Landlord collected a security deposit and a pet damage deposit in the amount of \$1,825.00 for each deposit. The Landlord continues to hold both deposits in trust. The tenancy ended on November 29, 2024. The rental unit is

an apartment unit in a low-rise apartment building, the Tenants rented the entire apartment unit under the tenancy agreement.

Regarding the forwarding address, the move in condition inspection and the condition inspection report, the Landlords submitted as follows. That they have not received the Tenants forwarding address at the time of this hearing. That a move in condition inspection was conducted and that the move in condition inspection report was provided to the Tenants by email, although the Landlords do not know the exact date of either when the inspection occurred or when the report was provided.

Regarding the damage the rental unit sustained due to the Tenants actions, the Landlords submitted as follows. That the Tenants damaged the rental unit's walls, closets, kitchen countertop, refrigerator door and shelves, and dishwasher. The Landlord's evidence included a monetary order worksheet, which provided a breakdown of the compensation sought, I will summarize the worksheet below:

Item Claimed	Cost Claimed
Kitchen Countertop	\$3,780.00
Interior Paint	\$896.00
Refrigerator	\$2,094.99
Dishwasher	\$1,399.00
Total Value Claimed	\$8,169.99

The Landlords declared that the rental unit and the apartment building was in a new condition at the beginning of the tenancy. The Landlords submitted several pictures of the rental unit from before and after the tenancy. The Landlords elaborated that the Tenants damaged the interior walls and closets by insisting on painting the interior walls and closets by themselves despite being advised by the Landlords not to.

The Landlords affirmed that they had to hire a new painter to repaint the entire rental unit, including the walls and the closets. The Landlords testified that the Tenants did not use matching paint to do any of the paintwork. The Landlords submitted pictures of the refrigerator and stated that the Tenants damaged the refrigerator door and the shelves inside the refrigerator. The Landlords stated that the Tenants damaged the inside of the dishwasher, specifically the door, and that the Landlord is unable to find the replacement part.

The Landlords submitted an estimate dated January 8, 2025, for the replacement kitchen countertop, a quote dated December 11, 2024, for the interior paint work, a screenshot of a suitable replacement fridge, and a screenshot of a suitable replacement dishwasher.

The Tenant G.M. testified that the Tenants did not damage the kitchen countertop, the refrigerator, or the dishwasher. G.M. stated that the countertop, the refrigerator and the dishwasher was returned in a good and functional condition at the end of the tenancy. Regarding the paintwork, G.M. affirmed that the Tenants painted several walls at the

rental unit, such as the living room and the kids' bedrooms, with the paint provided for by the Landlord. G.M. testified that the Tenants did not receive authorization from the Landlords to paint the walls.

The Tenant G.M. requested for the return of the security deposit and the pet damage deposit.

Analysis

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

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

- 1) That the other party violated the Act, regulations, or tenancy agreement;
- 2) That the violation caused the party making the application to incur damage or loss as a result of the violation
- 3) The value of the damage or loss; and,
- 4) That the party making the application did whatever was reasonable to minimize the damage or loss.

All four conditions of the four-point test must be satisfied in order to be awarded compensation.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Residential Tenancy Branch Policy Guideline #16 gives guidance on awarding compensation in situations where establishing the value of the damage or loss is not as straightforward, it states:

Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the evidence provided, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a partial claim for damage sustained by the rental unit due to the Tenant's actions.

I will address the granted part of the Landlord's claim first.

I accept the Landlord's claim that the rental unit was in a like new condition, in a new building at the beginning of the tenancy. I assign weight to the before and after pictures of the rental unit.

I find that the Landlords have demonstrated on a balance of probabilities that it is more likely than not that the Tenants have breached section 32(3) of the Act, by causing damage to the rental unit's interior paint by repainting it without authorization, and by returning the refrigerator with several dents on the refrigerator door at the end of the tenancy. I further find that the Landlords have demonstrated that the breaches caused the Landlords to incur damage or financial loss.

I assign weight to the Landlord's pictures of the refrigerator door demonstrating the condition of the refrigerator door and I assign weight to the Tenant's own testimony that they painted the rental unit without permission.

Regarding the paintwork, and based on the quote dated December 11, 2024, and my satisfaction Landlords have fulfilled all of the conditions on the abovementioned four-point test, I grant the Landlord's claim and I find that the Landlords are entitled to a monetary order in the amount of \$896.00.

Regarding the damage to the refrigerator door and shelves, while I accept the Landlord's claim that the refrigerator door and shelves were damaged by the Tenant, I find that the Landlords have not provided sufficient evidence to demonstrate the value of the damage or loss sustained. For example, it is unclear to me whether the damage to the door, or the shelves have negatively affected the operation or usage of the refrigerator, and it is unclear to me whether the damaged shelves negatively affected the operation or usage of the refrigerator. Consequently, I find that the Landlords did not sufficiently demonstrate the damage, or the financial loss incurred is equivalent to the cost of a replacement fridge. However, I do find that the Landlords acted reasonably by filing an application to claim for costs while also attempting to locate an appropriate replacement fridge.

Given the above, and regarding the damage to the refrigerator door and shelves I find that the Landlords is entitled to a monetary order for nominal damages, in the amount of \$300.00.

Regarding the unsuccessful parts of the Landlord's claim, the dishwasher and the kitchen countertop, I find that the Landlords have not submitted sufficient evidence to demonstrate that the Tenant violated the Act or the tenancy agreement, specifically by damaging the dishwasher or the kitchen countertop. The onus to present the evidence is on the party who submitted the evidence as per Rule 7.4.

I have examined the Landlord's evidence, including all pictures provided, and I find that the pictures do not provide a clear demonstration of the damage the Landlords claims the countertop or the dishwasher sustained. To add to the challenge, the pictures in the Landlord's evidence are not clearly labelled or captioned to explain to the viewer what they are seeing.

Based on the above, I dismiss the Landlord's claim for compensation for the dishwasher and countertop, without leave to reapply.

Outcome

Under section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,196.00 for the Landlord's loss for paint work, and nominal damages.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit or pet damage deposit?

Section 38(5) of the Act states that the right of the landlord to retain all or a part of the security deposit or pet damage deposit under section 38(4)(a) of the Act does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24(2) of the Act or section 36(2) of the Act.

In other words, a landlord may not retain a security deposit or pet damage or file an application to claim against either deposits if the landlord failed to perform their obligations under section 23 of the Act, and section 35 of the Act.

Section 24(2)(c) of the Act states that the right of a landlord to claim against a security deposit or pet damage deposit, or both, for damage to the residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the Residential Tenancy Regulation (the Regulation).

Section 18(1) of the Regulation states that the landlord must provide the tenant with a copy of the signed condition inspection report promptly and within 7 days after the move in condition inspection is completed.

In this case, based on the testimony of the Landlords, and the evidence provided, I find that the Landlords have not sufficiently demonstrated that they complied with section 24(2) of the Act, to provide a copy of the completed condition inspection report to the Tenants as required under the Act and within the required timeline under the Regulation. For example, the Landlords stated that they do not know when the condition inspection took place, or when the condition inspection report was emailed to the Tenants.

Having not complied with section 24(2) of the Act, I find that the Landlords have extinguished their right to claim against the Tenant's security deposit and pet damage deposit. I further find that since the Landlords extinguished their right to claim against either of the deposits, the Landlords breached section 38(6) of the Act by filing an application to claim against the Tenant's security deposit and pet damage deposit. Whether or not a condition inspection report took place for the move out inspection is no longer relevant given the Landlords initial extinguishment for the move in condition inspection report.

Consequently, I find that section 38(6) of the Act is applicable here, specifically the Landlords must pay the Tenants double the amount of the security deposit, and the pet damage deposit, plus interest on both original deposits.

Under section 38 of the Act and section 72 of the Act, the Tenants are entitled to a Monetary Order in the amount of \$3,650.00 for the sum of the original security deposit and the original pet damage deposit, plus interest accumulated to the date of this Decision, in the sum of \$129.09, plus the doubled portion of the security deposit and the pet damage deposit, in the amount of \$3,650.00. The above amounts combined equals the sum of \$7,429.09.

The interest was calculated in accordance with the Regulation, with the assistance of the Residential Tenancy Branch deposit interest calculator based on the date of this Decision.

The Landlord's request to retain the security deposit, pet damage deposit, is dismissed, without leave to reapply.

Is the Landlord entitled to recover the filing fee?

As the Landlords were not successful in their application, I find that the Landlords are not entitled to recovery of the filing fee.

The Landlord's request is dismissed, without leave to reapply.

Conclusion

The Landlords are entitled to a Monetary Order under section 67 of the Act.

The Landlord's request for the recover of the filing fee is dismissed, without leave to reapply.

The Tenants are entitled to a Monetary Order under section 38 of the Act.

The Tenant's cross application is dismissed in its entirety, with leave to reapply.

As both parties have been granted a Monetary Order, I exercise my discretion under section 72 of the Act to set off the amounts awarded to each party against each other. The remaining balance is in the Tenant's favour, and therefore the Tenants are entitled to a Monetary Order.

I grant the Tenants a Monetary Order in the amount of **\$6,233.09** under the following terms:

Monetary Issue	Granted Amount
The Tenant's Monetary Order for the return of the security deposit, the pet damage deposit plus interest on both deposits, and the doubled portions of the security deposit and pet damage deposit under section 38 and 67 of the Act	\$7,429.09
The Landlord's Monetary Order for damage or financial loss under section 67 of the Act	-\$1,196.00
Total Amount	-\$6,233.09

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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.

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 31, 2025

Residential Tenancy Branch