

## **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 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

Residential Tenancy Branch Rules of Procedure 7.4 enables the Arbitrator to restrict evidence under consideration to evidence referred to by the parties during the hearing.

In accordance with Residential Tenancy Branch Rules of Procedure 7.4, only the evidence referred to by the parties during the hearings will be considered.

### **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 retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested or is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

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 Landlord?

## **Background and Evidence**

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

The parties testified that this tenancy began on January 1, 2020, with a monthly rent of \$1,900.00, due on the first day of the month. The Tenant paid a security deposit of \$500.00. The tenancy ended on July 31, 2024.

### **July 2024 Rent - \$1,900.00**

The following is undisputed:

- the Tenant did not pay for July 2024 rent in the amount of \$1,900.00
- the Tenant moved out on July 31, 2024

The Landlord testified the following:

- they were granted an Order of Possession for the Tenant to move out on July 31, 2024 – I have included the file number on the cover page

### **Hardwood - \$500.00**

The Landlord and their agent testified the following:

- the Tenant caused damage to the hardwood

The Landlord provided the following as evidence:

- an undated photo of the hardwood

The Tenant and their agent testified the following:

- the Landlord did not provide any proof of payment
- the hardwood is past the useful life
- the hardwood at the end of the tenancy looked like that when the Tenant moved in

### **Drywall - \$3,000.00**

The Landlord and their agent testified the following:

- the photos show that there is a hole in the master bedroom wall, the master bedroom toilet is missing, and there is a hole by the entrance wall

The Landlord provided the following as evidence:

- undated photos of the master bedroom wall, master bedroom washroom, and entrance wall

The Tenant and their agent testified the following:

- the quote the Landlord provided does not show what amount was paid
- the damage is normal wear and tear
- the entrance door was missing a stopper, that is how the damaged was caused to the wall

### **Closet shelving - \$750.00**

The Landlord and their agent testified the following:

- the photos show that the closet is broken and all the shelves have been torn off

The Landlord provided the following as evidence:

- undated photos of the closet shelving

The Tenant and their agent testified the following:

- the damage is normal wear and tear
- the shelving was already damaged when they moved

### **Baseboards - \$800.00**

The Landlord and their agent testified the following:

- the photo shows the baseboards are peeled off the wall

The Landlord provided the following as evidence:

- undated photos of the baseboards

The Tenant and their agent testified the following:

- the photo the Landlord provided shows that the baseboards are intact

### **Tiles - \$1,300.00**

The Landlord and their agent testified the following:

- the photo shows the washroom tiles are shattered

The Landlord provided the following as evidence:

- an undated photo of the washroom tiles

The Tenant and their agent testified the following:

- the photo the Landlord provided shows poor installation of the tiles
- they do not agree that they caused the damage to the tiles

### **Sink - \$200.00**

The Landlord and their agent testified the following:

- the photo shows damage to the sink

The Landlord provided the following as evidence:

- a photo of the sink

The Tenant and their agent testified the following:

- the damage is normal wear and tear
- the sink was already old when they moved in

### **Toilet - \$500.00**

The Landlord and their agent testified the following:

- the photo shows the missing toilet in the washroom

The Landlord provided the following as evidence:

- a photo of the washroom without a toilet

The Tenant and their agent testified the following:

- they called the Landlord to let them know it was leaking and the Landlord removed the toilet and never installed a new one

### **Two Fridge Drawers- \$100.00**

The Landlord and their agent testified the following:

- a photo that shows the fridge drawers are damaged and cracked

The Landlord provided the following as evidence:

- an undated photo of the fridge drawers

The Tenant and their agent testified the following:

- the photo shows the fridge they purchased when they moved in, there was no fridge when they moved in

### **Carpet - \$500.00**

The Landlord and their agent testified the following:

- the photo shows the master bedroom carpet is very dirty and ripped up

The Landlord provided the following as evidence:

- an undated photo of the master bedroom carpet

The Tenant and their agent testified the following:

- the carpet was dirty when they moved in
- the photo does not show any damages to the carpet

### **Demolition and Disposal - \$1,500.00**

The Landlord and their agent testified the following:

- they are claiming this amount for the removal of garbage and the replacement of items at the end of the tenancy

The Tenant and their agent testified the following:

- they lived in the unit for 14 years and it would be expected that they would have to do some type of rehabilitation after they moved out

### **Clean Up -\$800.00**

The Landlord and their agent testified the following:

- they are claiming this amount for the clean up they had to do to the unit to bring it back to a habitable condition

The Tenant and their agent testified the following:

- the photos the Landlord provided show that they left the unit in a clean condition

### **Security Deposit - \$500.00**

The following is undisputed:

- the Landlord is retaining the full amount of the Tenant's security deposit of \$500.00
- the Tenant paid the deposit on January 1, 2020

- the Tenant's forwarding address was provided to the Landlord on August 1, 2024
- a move-in or move-out condition inspection report was not completed and one was never provided to the Tenant

## **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, regulation, or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

Section 44 of the Act provides the ways a tenancy can end under the Act.

Section 45 of the Act states that a Tenant may end a tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 57 of the Act states a Landlord may claim compensation for an overholding Tenant for any period that the overholding Tenant occupies the rental unit after the tenancy is ended.

A previous decision granted an Order of Possession to the Landlord with an effective date of July 31, 2024, because the Tenant served a written notice to end the tenancy to the Landlord on October 30, 2024, which indicated the Tenant would vacate the rental unit on May 31, 2024.

I find that the tenancy ended by way of a 10 Day Notice that the Tenant provided to the Landlord, with an effective date of May 31, 2024. The parties testified that the Tenant moved out on July 31, 2024.

I find the Landlord is entitled to overholding rent for the month of July 2024 in the amount of \$1,900.00 in accordance with section 57 of the Act.

Based on the evidence, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for the overholding rent for the month of July 2024 in the amount of \$1,900.00.

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 overholding rent under section 67 of the Act, in the amount of \$1,900.00.

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

Section 23 of the Act states that, at the start of the tenancy, a Landlord must inspect the condition of the rental unit with the Tenant on the day they are entitled to possession of the unit or on another mutually agreed day.

Section 35 of the Act states 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 21 of the Residential Tenancy Regulation (the Regulation) states in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Residential Tenancy Policy Guideline 16(D) provides the following:

- In order to determine the amount of compensation that is due, the Arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation, or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a Landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

To be awarded compensation for a breach of the Act, the Landlord must prove all of the following:

Four Point Test

- 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

<b>Item</b>	<b>Claimed \$</b>	<b>Granted \$</b>
Hardwood	500.00	0.00
Drywall	3,000.00	0.00

Closet shelving	750.00	0.00
Baseboards	800.00	0.00
Tiles	1,300.00	0.00
Sink	200.00	0.00
Toilet	500.00	0.00
Two Fridge Drawers	100.00	0.00
Carpet	500.00	0.00
Demolition and Disposal	1,500.00	0.00
Clean Up	800.00	0.00
<b>Total amounts</b>	10,447.50	<b>0.00</b>

I find the Landlord did not provide sufficient evidence for me to determine the condition of the unit and the above items being claimed when the Tenant moved in and moved out, due to the Landlord not completing a move-in and move-out condition inspection report with the Tenant as required under sections 23 and 35 of the Act (point one of the four-point test). Furthermore, I find the Landlord did not provide any other sufficient evidence, such as timestamped photographs of the condition of the unit and the above items at the time of move-in and move-out.

I also find, the Landlord did not provide any evidence that these amounts were paid, such as a receipt to confirm payment as required under Residential Tenancy Policy Guideline 16(D) (point three of the four-point test). The Landlord only provided a quotation.

Based on the above, the testimony of the parties, the evidence provided, and on a balance of probabilities, I find the Landlord has failed to prove that the Tenant did not comply with comply with the Act, regulation, or tenancy agreement.

For the above reasons, the Landlord's application for 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 is dismissed, without leave to reapply.

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

Section 23 of the Act provides the following:

(1)The Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2)The Landlord and Tenant together must inspect the condition of the rental unit on or before the day the Tenant starts keeping a pet or on another mutually agreed day, if

(a)the Landlord permits the Tenant to keep a pet on the residential property after the start of a tenancy, and

(b)a previous inspection was not completed under subsection (1).

(3)The Landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4)The Landlord must complete a condition inspection report in accordance with the regulations.

(5)Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

(6)The Landlord must make the inspection and complete and sign the report without the Tenant if

(a)the Landlord has complied with subsection (3), and

(b)the Tenant does not participate on either occasion.

Section 24(2) provides the following:

The right of a Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord

(a)does not comply with section 23 (3) [*2 opportunities for inspection*],

(b)having complied with section 23 (3), does not participate on either occasion, or

(c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 35 of the Act provides the following:

(1)The Landlord and Tenant together must inspect the condition of the rental unit before a new Tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2)The Landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3)The Landlord must complete a condition inspection report in accordance with the regulations.

(4)Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

(5)The Landlord may make the inspection and complete and sign the report without the Tenant if

(a)the Landlord has complied with subsection (2) and the Tenant does not participate on either occasion, or

(b)the Tenant has abandoned the rental unit.

Section 36 (2) of the Act provides the following:

Unless the Tenant has abandoned the rental unit, the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord

- (a)does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b)having complied with section 35 (2), does not participate on either occasion, or
- (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38(5) and (6) of the Act states that when the Landlord's right to claim against the security deposit is extinguished, the Landlord may not make a claim against it and must pay the Tenant double the amount of the security deposit.

The parties testified that they did not do a move-in and move-out condition inspection report together. The Landlord testified that they did not do a move-in or move-out condition inspection report on their own and they did not provide a copy to the Tenants.

I find that since the Landlord did not comply with sections 24, 36 and 38 of the Act, the Tenant is entitled to a monetary award in the amount of \$1,024.78, for double their security deposit, plus interest.

For the above reasons, the Landlord's application for 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 is dismissed, without leave to reapply.

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

As the Landlord was not successful in the majority of their application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$775.22** under the following:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order to the Landlord for overholding rent under section 67 of the Act	\$1,900.00
a Monetary Order to the Tenant for the return of their security deposit doubled, plus interest from the Landlord	\$1,024.78
authorization to the Tenant to recover the filing fee for their application from the Landlord under section 72 of the Act	\$100.00
<b>Total amount awarded to the Landlord</b>	<b>\$775.22</b>

The Landlord is provided with this Order 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).

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: April 17, 2025

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Residential Tenancy Branch