



## **DECISION**

### **Introduction**

This hearing 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 deposits 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

This hearing also dealt with the Landlords' 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 deposits 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 is a reconvened hearing. The previous hearing was adjourned because the Tenant did not have an opportunity to complete their response to the Landlords' claim.

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**

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

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

Are the Landlords 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 Landlords?

## **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.

Evidence was provided that this tenancy began on October 25, 2019, with a monthly rent of \$1,850 due on the first day of the month. The Tenant paid a security deposit of \$900.00 on October 11, 2019, and a pet damage deposit of \$900.00 on March 1, 2021. The tenancy ended on November 30, 2024.

### **Security Deposit - \$388.50 and Pet Damage Deposit - \$418.17**

The following is undisputed:

- the Landlords are retaining the security deposit of \$388.50 and pet damage deposit of \$418.17
- the Tenant provided the Landlords their forwarding address in writing on December 1, 2024
- the parties completed a move-in condition inspection report, but a copy was not provided to the Tenant
- the parties completed a move-out condition inspection report, and a copy was provided to the Tenant when they received the Notice of Dispute Resolution Proceeding Package for the Landlords' application – the Landlords' application was filed on December 20, 2024

### **Tub - \$220.50**

Landlord A.H. testified the following:

- they are seeking the amount of \$220.50 to repair the damage caused to the tub by the Tenant
- the Tenant sent them a text message notifying them of the damage

The Landlords provided the following as evidence:

- a copy of an invoice dated January 30, 2023, for \$220.50 – no proof of payment was provided

The Tenant testified the following:

- the damage to the tub was a small chip
- as soon as they noticed the chip they contacted the Landlords
- the tub is 12 years old

### **Drywall - \$168.00**

Landlord A.H. testified the following:

- they are seeking the amount of \$168.00 for inspecting the drywall stain in the bedroom
- the Tenant notified them regarding a stain in the bedroom ceiling drywall
- the stain on the ceiling drywall was caused by something in the unit

The Tenant testified the following:

- the stain was beyond their control as it was from the above unit

### **Carpet - \$418.17**

Landlord A.H. testified the following:

- they are seeking the amount of \$418.17 to repair the carpet damage caused by the Tenant's cat

The Landlords provided the following as evidence:

- an undated photo that they claim shows the damage caused to the carpet

The Tenant testified the following:

- they do not agree with the charge as the carpet is past its useful life

## **Analysis**

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

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.

Section 35 of the Act provides the following on condition inspection reports at the end of the tenancy:

(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 18 of the Residential Tenancy Regulation (the Regulation) provides the following regarding condition inspection reports:

(1)The Landlord must give the Tenant a copy of the signed condition inspection report

(a)of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

(b)of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i)the date the condition inspection is completed, and

(ii)the date the landlord receives the tenant's forwarding address in writing.

(2)The landlord must use a service method described in section 88 [*service of documents*] of the Act.

Section 21 of 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 Landlords 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

Item	Claimed \$	Granted \$
Tub	220.50	0.00
Drywall	168.00	0.00
Carpet	418.17	0.00
<b>Total amounts</b>	806.67	<b>0.00</b>

I find the move-out condition inspection report was not properly completed in accordance with the Section 35 of the Act and Section 18 of the Regulation because the Landlord did not provide the Tenant a copy of the report within 15 days of receiving the Tenant's forwarding address, therefore I must give the lack of damage noted to the above items on the condition inspection report minimal weight in my decision and in accordance with Section 21 of the Regulation.

I find the Landlords did not provide sufficient evidence, such as timestamped photographs of the condition of the above items at the time of move-in and move-out for me to be able to determine the condition of these items at the time of move-in and move-out.

Based on the above, the testimony of the parties, the evidence provided, and on a balance of probabilities, I find the Landlords have failed to prove that the Tenant did not comply with section 32(3) of the Act, which required the Tenant to repair damage to the rental unit or common areas (point one of the four-point test). Furthermore, the Landlords 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 Landlords only provided invoices.

For the above reasons, the Landlords' application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 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 38 allows a Landlord to retain from the Tenant's deposits if, at the end of the tenancy, the Tenant agrees in writing that the Landlord may retain an amount to pay a liability or obligation of the Tenant. If the Tenant does not agree in writing, section 38(1) requires the Landlord to return the entire security deposit within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. If the Landlord wishes to retain all or part of the security deposit, the Landlord must make an application for dispute resolution within the 15-day time period. If the Landlord does not return the security deposit or file a claim against the Tenant within 15 days, the Landlord must pay the tenant double the amount of the security deposit.

Under section 38 of the Act, The Landlords were required to provide the Tenant their deposits within 15 days of receiving their forwarding address or file a claim against the deposits within the 15 days. The consequences of the Landlords not doing so required me to double the balance the Landlords were retaining of the deposits under section 38(6)(b). The Tenant provided their forwarding address December 1, 2024, and the Landlords made their application on December 23, 2024.

I find the Landlords did not make their application within 15 days of receiving the Tenant's forwarding address. Therefore, the Tenant is entitled to the return of the balance of the deposits the Landlords are retaining in the amount \$806.67 doubled, plus interest under section 38 of the Act, for a total amount of \$1,653.40.

**Are the Landlords entitled to recover the filing fee for this application from the Tenant?**

As the Landlords were not successful in their application, the Landlords' 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 Tenant a Monetary Order in the amount of \$1,753.40 under the following:

Monetary Issue	Granted Amount
a Monetary Order to the Tenant for the return of the balance of their deposits doubled, plus interest from the Landlords	\$1,653.40.
authorization to the Tenant to recover the filing fee for their application from the Landlords under section 72 of the Act	\$100.00
<b>Total Amount Awarded</b>	<b>\$1,753.40.</b>

The Tenant is provided with this Order 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).

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: May 1, 2025

---

Residential Tenancy Branch