

DECISION

Introduction

This hearing dealt with the applications from the Landlord and the Tenant.

The Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) is for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- 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
- 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

The Tenant's Application for Dispute Resolution under the Residential Tenancy Act (the Act) is for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act

Tenant T.S.A., Tenant S.S., Tenant's advocate G.H., Witness M.W., Witness P.L., and Witness M.M.T. attended the hearing for the Tenant

Landlord J.O.T., attended the hearing for the Landlord. Witness A.W. appeared at the previous hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence, and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord acknowledged service of the Tenant's evidence, and I find that the Tenant's evidence was served to the Landlord in accordance with section 88 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 a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

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

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 June 1, 2022, with a security deposit of \$1,095.00. Rent was \$2,190.00, due on the first day of the month. The rental unit is a lower portion of a home.

The Landlord testified that they completed a condition inspection report at the start of this tenancy with the Tenant. The Tenant testified that they completed the condition inspection report at the start of this tenancy with the Landlord's Husband, the Landlord was not present. The name of the Landlord's Husband appears on the condition inspection report.

The Tenant vacated the rental unit on March 15, 2024. The Landlord testified that they completed a condition inspection with the Tenant, but the Tenant refused to sign the report and refused to take a copy. The Landlord's witness A.W. was present for the condition inspection report at the end of this tenancy.

The Tenant's advocate stated that the Landlord received the Tenant's forwarding address on October 29, 2024 and did not comply with section 38 of the Act. The Landlord denies receiving the forwarding address at that time. The Landlord's evidence included a decision by the Residential Tenancy Branch on a previous file, wherein the

Tenant requested the return of their damage deposit. That decision states that the Tenant gave the Landlord a letter dated October 24, 2024 which had the Tenant's forwarding address. The Tenant provided the Canada Post Tracking number, and Canada Post indicates that the letter was received and signed for on October 29, 2024.

The Landlord testified that they did not receive that letter in October 2024. The Landlord received the Residential Tenancy Branch decision on the previous file on December 24, 2024.

The Tenant provided a letter in which they gave the Landlord their forwarding address on December 23, 2024. The Landlord made application for damage to the rental unit on January 6, 2025.

The Landlord claims that the Tenant caused damage to the rental unit and should be compensated for repairs as follows:

Removal of carpet and installation of hardwood floor	\$1,500.00
Hardwood flooring materials	\$2,659.89
Removal and installation of bathtub, faucet and vanity	\$1,505.00
Vanity and toilet	\$567.84
Shower curtain rod	\$74.27
Faucet, doorstop adhesive	\$191.65
Wall and floor tile installation	\$1,350.00
Tile and grout materials	\$359.04
Tile	\$239.64
Floor trims	\$145.56
Floor tile edge	\$34.45
Paint whole rental unit	\$2,000.00
Cleaning rental unit	\$700.00
Garbage removal	\$100.00
Other repairs to radiators, laundry door, electrical outlet, switches	\$300.00
total	\$11,727.34

The Landlord provided their receipts for the amounts claimed, except garbage removal, painting, and the other repairs. For those items without receipts the Landlord is claiming compensation for their time/labour.

The Landlord also claimed for loss of rental income for half a month, explaining that the rental unit could not be re-rented until the damages were repaired. The rental unit was empty from March 15 - 31, 2024.

The Landlord provided a copy of the condition inspection report and photos of the rental unit from the start and end of this tenancy. The Landlord also provides videos.

The Tenant denies any damage to the rental unit, except a stain on one wall. The Tenant testified that they left the rental unit clean at the end of this tenancy.

The Landlord provided a written statement of S.N., who did not testify. The statement speaks to the condition of the rental unit and the end of the tenancy but provides no information on the condition of the rental unit at the start of this tenancy.

Flooring

The Landlord testified that the carpet in the rental unit was about 10 years old, as the rental unit was renovated in 2012. The Landlord testified that the carpet was in good condition at the start but was rotted and stained at the end of this tenancy. The carpet had to be replaced. The Landlord installed vinyl flooring and provided the receipts for materials and installation.

The Tenant, S.S., and P.L. testified that there were stains on the carpet at the start of this tenancy. P.L. stated that the flooring was old when the tenancy started.

The condition inspection report notes one stain on the carpet in one bedroom.

Bathtub

The Landlord testified that there was a large crack on the inside bottom of the bathtub at the end of this tenancy that was not present at the start of the tenancy. The condition inspection report states “crack” as the condition of the bathtub. The Landlord testified that “crack” referred to a small crack on the outside of the bathtub.

The Landlord testified that the bathtub, which has the shower and wall portion attached to it, had to be replaced. The shower curtain rod was attached to the tub/shower unit so it had to be replaced as well.

The Landlord’s witness A.W. testified that there was only a small crack on the outside of the bathtub at the start of this tenancy. The bathroom had been newly renovated before this tenancy.

The Tenant testified that the large crack on the inside bottom of the bathtub was present at the start of this tenancy and got larger during the tenancy. The Tenant testified that the Landlord was not present for the condition inspection report, it was the Landlord’s husband. The Tenant specifically asked the Landlord’s husband to mark down the crack. There was also a small chip on the bathtub, but that is not the crack that was noted.

The Tenant’s witness P.L. testified that they were present for the condition inspection report at the start of this tenancy. The large crack in the inside bottom of the bathtub was present at the start of this tenancy. The crack got larger during this tenancy. The bathtub did not leak.

The Tenant's witness, M.M.T., described the bathtub as old, and stated that the whole bathroom appeared old.

Vanity, Faucet, Tiling, Toilet

The Landlord testified that the vanity, faucet and tiling was all new when the Tenant moved in. At the end of this tenancy the wood at the bottom of the vanity was rotten. The Landlord testified that all of it had to be replaced.

The Landlord testified that the toilet was replaced at the same time as the rest of the bathroom was repaired because it had to be moved when the flooring was done. The Landlord testified that it did not make sense to replace the same leaky toilet after the rest of the bathroom was all new.

The Landlord testified that they found a bucket at the end of the tenancy and believes that there was constant water in the bathroom causing the water damage. The Landlord testified that the tiles had to be replaced because the water damaged caused the tiles to lift.

A.W. testified that the bathroom was 'trashed' at the end of this tenancy. There was a bucket of water under the sink where there was a leak. There was a large crack on the inside bottom of the bathtub.

The Tenant, and S.S. testified that the bathroom was not new at the start of this tenancy. S.S. testified that tiles were old, and there was a crack in the bath that did not leak. The Tenant testified that they did not cause any damage to the bathroom. The Tenant testified that there was no flooding in the bathroom either.

Paint

The Landlord testified that the rental unit had been newly painted before the start of this tenancy. The Landlord also stated that the rental unit was painted one year before this tenancy started. The rental unit had to be fully repainted at the end of this tenancy due to marks and damage left by the Tenant.

The Tenant testified that there were marks and cracks on the walls at the start of this tenancy. The Tenant stated that they caused a stain on one wall in one bedroom, but otherwise the paint was undamaged by the Tenant.

The condition inspection report at the start of this tenancy notes marks on the walls in the living room, dining room, bathroom, master bedroom, and bedroom #3. At the end of the tenancy there is additional damage to the walls.

Cleaning

The Landlord testified that they believed the rental unit had not been cleaned at all during this tenancy. The Landlord testified that a cleaner had to come clean the rental unit for three days at the end of this tenancy. The Landlord testified that the fridge, oven, microwave, side of cabinet next to/ behind the oven, and a kitchen cabinet were

dirty. The oven is not on rollers. The Landlord's videos show that some window tracks and some portions of baseboards were not wiped clean.

The Landlord provided photos of the state of cleanliness of the rental unit.

A.W. testified that the rental unit was clean and in good condition at the start of this tenancy. A.W. stated that at the end of this tenancy she was shocked by the stains in the halls and bedrooms. A.W. stated that there was food left in the fridge and freezer.

The Tenant testified that they cleaned the rental unit every two days and kept it tidy during the tenancy. There was never any water flooding in the bathroom. The Tenant testified that they, along with other people, cleaned the rental unit for two days at the end of this tenancy. The rental unit was left clean everywhere except for one bedroom, which was not fully cleaned and had a stain on the wall and on the floor.

The Tenant's Witness S.S. testified that they lived in the rental unit with the Tenant. It was clean during the tenancy. They helped to clean it at the end of the tenancy. They stated that the rental unit was clean and in good condition when they vacated. There was a stain on one wall.

Garbage

The Landlord did not provide photos or receipts for the garbage removal claim.

Other repairs

The Landlord testified that they completed other repairs, like replacing an outlet cover, laundry door, replacing some baseboards, and radiators had to be reattached to the wall.

The Landlord testified that they did as much on their own as possible to minimize costs. The Landlord painted the rental unit themselves instead of hiring a painter. The Landlord claims for their time, at a cost lower than they were quoted by a painter.

S.S. testified that generally the rental unit was old, but in 'ok' condition at the start and end of this tenancy.

P.L. testified that they visited the rental unit during this tenancy and it was always very clean. P.L. helped the Tenant to clean and move out at the end of this tenancy. The rental unit was clean and in good condition when the Tenant moved out.

The Tenant's witness, M.M.T., testified that they helped the Tenant clean the rental unit at the end of this tenancy. M.M.T. is a friend of the Tenant and visited them during the tenancy. The rental unit was always clean when M.M.T. visited, and it was clean when the Tenant moved out as well.

The Tenant's witness, M.W., testified that they helped the Tenant to move out and

clean. Everything was clean at the end of the tenancy. M.W. testified that they cleaned the fridge and there was no food left inside.

The Tenant's advocate argued that the flooring was past its useful life in any case, so the Tenant does not have to pay for its replacement in any case. Further the flooring was purchased prior to the condition inspection report being completed, which means that the Landlord was planning the renovation and is trying to get the Tenant to pay for it. The Landlord testified that the retailer must have made the mistake as they did not purchase flooring before the Tenant vacated.

The Tenant's advocate noted that the Landlord's photos show only close ups of small, dirty, hard to reach parts of the rental unit, not the rental unit as a whole. The Landlord is lacking photos of some claimed damages, like the faucet.

Rent

The Landlord testified that they were not able to re-rent the rental unit while repairs were being completed. The Tenant's advocate argued that these renovations were pre-planned and the Tenant should not have to pay for any loss of rental income. The parties agreed in a settlement when and how this tenancy would end.

Analysis

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

Residential Tenancy Branch Policy Guideline 40 (PG 40) details the useful life of building elements. Compensation for damage or loss is meant to put claimant in the same position as if it had not occurred. PG 40 explains that replacement of a damaged element may improve the value or condition of the element, putting the claimant in a better position than before the damage occurred. This is a concept known as betterment. In those circumstances, the arbitrator may consider the remaining useful life of the building element and adjust the amount of compensation to reflect its value at the time the damage occurred.

Flooring

I have reviewed the Landlord's photos and videos which show stains on the carpet. The Landlord testified that the carpet was ten years old, having been renovated in 2012. However, 2012 is over twelve years ago, not ten. The useful life of a carpet under PG 40 is twelve years, so the flooring is past the end of its useful life. I find that the Tenant is not required to compensate the Landlord for building elements that are past their useful life, including all the flooring.

Bathtub

The condition inspection report from the start of this tenancy notes that there was a crack in the bathtub, the door was dented at the hallway corner, and there were a few dents to the walls and trim.

On a balance of probabilities, based on the testimony of the Tenant, P.L. and based on the Landlord's husband's name being on the condition inspection report, I find it most likely that Landlord's husband completed the condition inspection report with the Tenant and the Landlord was not present.

I find that the Landlord has not proven that the Tenant caused the crack to the inside bottom of the bathtub. I rely on the condition inspection report as proof that there was a crack in the bathtub at the start of this tenancy. I accept the Tenant's, and P.L.'s testimony that the 'crack' noted on the condition inspection report was the large crack on the inside bottom of the bathtub, and not the chip on the outside edge.

On a balance of probabilities, based on the evidence and testimony before me, I find that the Landlord has not proven that the Tenant caused the damage to the bathtub. The Landlord is not entitled to their costs to renovate the bathroom, because the Landlord has not proven that the Tenant caused the damage.

Vanity, Faucet, Tiling, Toilet

The photos of the bathroom at the end of the bathroom show a completely renovated bathroom that is a substantial improvement. The older style vinyl flooring is replaced with new tiles. The vanity is replaced with a larger vanity.

The Landlord's photos of the damage to the vanity show that water caused discoloration and bubbling. The vanity is made of particle board and is swollen from water damage at the bottom, and other small areas. The Landlord described the vanity as rotten, and I find that characterization to be an overstatement. On a balance of probabilities, I am not persuaded that the vanity had to be replaced. I find that the Landlord has not proven that they minimized their loss.

The Landlord's photos from the end of this tenancy do not show flooring that was damaged by the Tenant. The Landlord testified that the tiles were lifting from water damage, but there is no evidence of that. I find that the Landlord has not proven on a balance of probabilities that the flooring in the bathroom required replacement or was damaged by the Tenant.

The Landlord testified that the Tenant did not damage the toilet, but it made sense to replace it along with the rest of the bathroom. While this is a practical approach, it is unfair to ask the Tenant to compensate the Landlord for the toilet replacement which the Tenant did not damage. Further, the Landlord characterized the toilet as old and leaky.

On a balance of probabilities, based on the testimony and evidence before me, I find that the Landlord has not proven that the Tenant breached the act by causing damage to any portion of the bathroom. I find that the Landlord has not proven that the complete renovation of the bathroom was necessary because of the actions or neglect of the Tenant.

Paint

The Landlord testified that they believed the rental unit was painted right before the Tenant moved in. I have reviewed the Landlord's photos of the rental unit at the start of the tenancy. The walls appear to be in a generally fair condition, though there are some parts that appear to be in need of painting. The condition inspection report indicates that there were marks on the walls in portions of the rental unit. I find that the number of marks noted on the condition inspection report at the start of this tenancy is not consistent with a rental unit that was "newly painted."

PG 40 states that the useful life of interior paint is six years. I find that the Landlord has not proven the age of the interior paint. I find that the Landlord has not proven the value of their claim, because the age of the paint is unknown, and the paint was not without damage at the start of this tenancy.

The Tenant agreed that they left a stain on one wall in one bedroom. I find that the Tenant breached the act by leaving behind a stain on one wall, and the Landlord is entitled to nominal damages of \$100.00 for this breach, under Residential Tenancy Branch Policy Guideline 16.

Garbage Removal

The Landlord has provided no evidence of garbage left behind by the Tenant and no proof that the Landlord paid anything to remove garbage. I find that the Landlord has not proven their claim for compensation for garbage removal.

Cleaning

The Landlord's photos from the start of the tenancy tend to show full rooms, whereas the photos from the end of this tenancy show close ups of smaller areas that are dirty. The Landlord's videos are more helpful but also do not show the full condition of the rental unit at the end of this tenancy. I find that, in general, these photos are not proof that the rental unit, as a whole, was not reasonably clean. However, some photos show that the oven, microwave, and part of the floors were not reasonably clean.

Under Residential Tenancy Branch Policy Guideline 1 (PG 1), the Tenant was not required to move the oven and clean behind it because it is not on rollers. The Tenant

was required to wipe the window and window tracks, to clean out the microwave and stove/oven.

I find that some portions of the rental unit were not reasonably clean, including the microwave, oven, and small portions of walls and flooring. Except for these small areas, I find that the Landlord has not proven that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy.

I find that the Landlord's claim of \$700.00 for the cleaning is not reasonable. The areas that were not left clean would not have taken three days to bring to a reasonably clean standard. The Tenant is not responsible for 'deep cleaning' or making the rental unit "move-in ready" for the next tenant.

I find that the Landlord is entitled to \$100.00 for cleaning the rental unit, as the small amount of cleaning required could have been completed in less than two hours, and a reasonable rate for a cleaner is \$50.00 per hour.

Other repairs

The Landlord has claimed \$300.00 for their repairs but provided no details of the time they spent repairing the various portions of the rental unit. The Landlord's photos show that the radiators that the Landlord reconnected at the end of this tenancy were not connected at the start of this tenancy. The Landlord did not provide proof of the state of the baseboards at the start of this tenancy.

The Tenant agreed that one outlet cover was damaged during this tenancy. This repair would not have cost the Landlord \$300.00 to repair, and the Landlord has provided no breakdown of the cost of repair of this item.

I find that the Landlord has not proven the value of their loss for the other repairs claimed. I find that the Landlord is not entitled to their claim for \$300.00 for repairs.

Under section 67 of the Act, I find that the Landlord is entitled to a Monetary Order for Damage caused to the rental unit in the amount of \$200.00 (\$100.00 for cleaning and \$100.00 for painting.)

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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 Landlord claims that due damage caused by the Tenant, the Landlord was unable to re-rent the rental unit from March 15- 31, 2024.

Based on the dates of the flooring purchase, I accept the argument of the Tenant's advocate that the Landlord was planning this the flooring replacement prior to the end of this tenancy. I find that the Landlord's loss of rental income while the flooring was being replaced is not due to a breach of the Act by the Tenant.

On a balance of probabilities, based on the evidence and testimony before me, I find that the Landlord has not proven that they are entitled to compensation for loss of rental income. I dismiss this claim 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 the return of their security deposit?

Section 38(1) 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.

Under section 38(6) if the Landlord has not made a claim against the security deposit or returned it to the Tenant within 15 of the latter of the end of the tenancy or the receipt of the Tenant's forwarding address, then the Landlord must pay the Tenant double the amount of the security or pet damage deposit.

I have reviewed the evidence the Tenant provided in their previous file. I accept the testimony of the Tenant's advocate, and the evidence from the previous file as proof that the Tenant's forwarding address was sent to the Landlord in a letter dated October 24, 2024. The Canda Post tracking information, the Tenant's signed proof of service, and their testimony confirms that the Landlord signed for this letter on October 29, 2024. I find that the Landlord was provided the Tenant's forwarding address on October 29, 2024.

As the forwarding address was provided on October 29, 2024 and the Landlord made their application on January 6, 2025, I find that the Landlord did not make their application within 15 days of the the forwarding address being provided.

Under section 38(6) I find that the Landlord must pay the Tenant double their deposit.

I find that the Landlord is entitled to retain a portion of the security deposit in full satisfaction of their monetary order under section 72 of the Act. The balance of the security deposit must be returned to the Tenant.

Residential Tenancy Branch Policy Guideline 17 explains that the deposit is doubled first, then interest is added, and then the amount owing to the Landlord is subtracted.

The security deposit was \$1,095.00 at the start of this tenancy and has accrued \$54.38 in interest to the date of the hearing.

Double the deposit with interest is \$2,244.38. The Landlord is entitled to retain the Monetary Order of \$200.00 from the Tenant's deposit and must return the remaining \$2,044.38, to the Tenant.

Is the Landlord entitled to recover the filing fee for their application from the tenant?

As the Landlord was largely unsuccessful in their claims, I find that the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2,044.38** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for damage to the rental unit in favour of the Landlord under section 67 of the Act	-\$200.00
Double the Tenant's security deposit with interest under section 38 of the Act.	\$2,244.38
Total Amount	\$2,044.38

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 6, 2025

Residential Tenancy Branch