

DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the Act).

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package and evidence sent by registered mail on February 14, 2025. The Landlord acknowledged being served with the Tenant's hearing package and evidence by registered mail sent on February 12, 2025, and additional evidence sent by registered mail on April 9, 2025.

Preliminary Matters

The Tenant applied on February 10, 2025 for a monetary order for damage or loss under the Act, regulation, or tenancy. The Tenant testified that they made this application because the tenancy ended under a Four Month Notice to end tenancy, and the Landlord had not yet returned the final month of rent which the Tenant was entitled to.

Both the Landlord and Tenant testified that the Landlord returned the final month of rent to the Tenant by registered mail on February 11, 2025. This fulfilled the full subject of the Tenant's application for compensation. The Tenant confirmed they received and deposited the returned rent.

Therefore, the Tenant sought at the hearing to withdraw their claim for compensation, as the Landlord paid the amount sought on February 11, 2025, and fulfilled the requirements of section 51 of the Act.

Under section 64(3)(c) of the Act, I have amended the application, and the Tenant's claim for a monetary order for compensation under the Act, Regulation, or tenancy agreement is withdrawn.

As the Tenant's application was not required after date and the Landlord complied with section 51 of the Act, the Tenant's application to recover their filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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 entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested?

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

Facts and Analysis

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

This tenancy began on June 15, 2020, with a monthly rent of \$2250.22 due on the first of each month, with a security deposit in the amount of \$1050.00.

Both parties testified that a condition inspection report was not completed at the start of the tenancy. The parties did a walk through at the start and end of the tenancy, but did not complete inspection reports together during this walk through, nor was the Tenant presented with any inspection report for their review or signature.

The Landlord testified that the building was newly built at the start of the tenancy, so they did not feel it necessary to complete an inspection at the start of the tenancy. The Landlord claims they completed a move out inspection report in the absence of the Tenant, and did not seek the Tenant's review or signature on the report.

The Tenant provided their forwarding address to the Landlord on February 1, 2025, in person during the move out walk through.

Paint: \$74.34 and repair supplies: \$91.22 (Total: \$165.56)

The Landlord claims \$165.56 for the cost of materials to patch and paint the walls, doors, and trim of the rental unit, and to replace burnt out lightbulbs, after the tenancy ended. The Landlord provided photo evidence of the damage and holes to the walls and doors of the unit, located throughout the rental unit. The Landlord provided a copy of their receipt for materials purchased for the repairs. The Landlord completed the repair work themselves after the tenancy ended.

The Tenant claims that they patched all the holes that were in the walls from the tenancy as was required of them, and they should not be responsible for the Landlord's costs for materials. The Tenant claims that the door damage occurred due to a poorly made door, and again testified that they patched over the hole and met their repair requirement.

Toilet replacement: \$427.35

The Landlord claims \$427.35 for the cost to replace the toilet in the rental unit in September 2024, during this tenancy. The Landlord claims that the Tenant cracked the back of the toilet, and that this damage was caused during the tenancy and therefore the tenant should be responsible. The Landlord argues that the Tenant likely 'sat down too hard' which caused the crack.

The Tenant argues that they did not, by their action or neglect, damage the toilet in the rental unit by any unusual action or neglect. The Tenant claims that the toilet was cracked from regular use, and that sitting on a toilet should not cause it to crack and is therefore not the Tenant's responsibility to repair.

Visitor parking pass replacement: \$26.25

The Landlord claims \$26.25 for the cost to replace a visitor parking pass which was not returned by the Tenant at the end of the tenancy.

The Tenant acknowledged their failure to return this parking pass and accepted responsibility for this cost.

Replacement FOB: \$110.25

The Landlord claims \$110.25 for the cost to replace the FOB access key to the building and garage area. The Landlord testified and provided photo evidence that the FOB, which was brand new at the start of the tenancy, was returned to the Landlord with a cracked backing, exposing the battery.

The Landlord testified that the FOB works intermittently, but it required replacement as it did not always work, and because if the battery were exposed to water it would be

damaged beyond use. The Landlord provided a copy of the invoice for the replacement FOB as evidence to support this claim.

The Tenant claims that though the FOB was cracked, which they argue was reasonable wear and tear, it was in working condition at the end of the tenancy, and therefore they should not be expected to replace the FOB.

Replacement mailbox key: \$30.45

The Landlord claims the Tenant failed to return a mailbox key at the end of the tenancy. The Landlord claims they replaced the key at this cost but did not provide any receipt or evidence of this replacement. The Tenant asserts that they returned the key directly to the Landlord during the move out walk through.

Cleaning: \$650.00

The Landlord claims \$650.00 for the cost to clean the rental unit after the tenancy ended. The Landlord claims the Tenant failed to properly clean the unit, and provided an itemized invoice for the cleaning services required after the tenancy ended. The Landlord also provided photo evidence of the rental unit condition.

The Tenant testified and provided evidence that they hired a professional cleaning company to clean the rental unit after they moved out. The Tenant argues that the rental unit was left reasonably clean, and though some small or difficult to reach areas were not cleaned, the overall condition was reasonable.

Carpet cleaning: \$236.25

The Landlord claims \$236.25 for the cost to have the carpets of the rental unit professionally cleaned at the end of the tenancy. The Landlord testified that the Tenant failed to clean the carpets at the end of the tenancy, and provided evidence of the carpet cleaning costs and results.

The Tenant testified that they did not clean or hire a professional to clean the carpets at the end of the tenancy.

Parking space rent: \$3300.00

The Landlord claims \$3300.00, for the total collected by the Tenant by renting out their additional parking space during their tenancy. The Landlord argues that the Tenant was not entitled to profit from their second parking space during the tenancy, and states that if the Tenant did not need their second parking space, the Landlord would have rented it out to another resident for their own gain.

The Tenant testified that they did rent out their second parking space which was allotted to them under the tenancy agreement. The Tenant argues that they were not prevented

or restricted from renting out the additional space by any term of the tenancy agreement.

Both parties provided a copy of the signed tenancy agreement as evidence for this proceeding.

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 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.

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

Paint: \$74.34 and repair supplies: \$91.22 (Total: \$165.56)

Based on the evidence and testimony before me, and on a balance of probabilities, I find that the Landlord has proven their claim for \$165.56 for the cost of materials to repair damage to and replace lightbulbs in the rental unit.

I find that the Landlord's photo evidence is sufficient to prove that the Tenant caused damage to the walls and doors of the rental unit beyond reasonable wear and tear during this tenancy. I find that the photos show numerous holes in the walls and doors that are larger than what could reasonably be caused by the regular use of the walls or doors (such as for hanging photos, or regular opening and closing).

Though it is clear the Tenant attempted to patch the holes they caused, the patching appears to be uneven and unsanded, and was not properly painted to complete the repair, as is required of the Tenant under Tenancy Policy Guideline 1 (page 4) when a Tenant is responsible for wall damage.

I find that the Landlord has provided evidence of the burnt out lightbulbs left at the end of the tenancy, and their purchase receipt for replacement bulbs. In accordance with Tenancy Policy Guideline 1, the Tenant is responsible to replace all burnt out lightbulbs during and at the end of a tenancy.

I find that the Landlord has proven the value of their loss by providing a copy of the receipt for materials purchased. I find the Landlord acted reasonably to minimize their loss by completing the repair work themselves.

Therefore, I grant the Landlord a Monetary Order of \$165.56 for damage to the rental unit under sections 32 and 67 of the Act.

Toilet replacement: \$427.35

Based on the evidence and testimony before me, I find that the Landlord has failed to prove their claim for \$427.35 for the cost to replace the toilet in the rental unit.

Section 32 of the Act and Tenancy Policy Guideline 1 state that the Landlord is responsible for repairs that result from 'reasonable wear and tear', which is wear or damage over time from the regular and intended use of a building element or appliance.

I find there is no evidence that the Tenant used the toilet of the rental unit in an unusual or neglectful manner, nor is there any evidence that the Tenant intentionally caused damage to the toilet by their action (such as by smashing it with a hammer).

I do not find it likely that the Tenant intended to damage the toilet by sitting on it, nor that any reasonable person would expect a toilet to crack from sitting on it and using it for its intended purpose. I do not find that 'sitting down too hard' on a toilet is a likely or reasonable explanation for its damage.

I find it more likely that the toilet was of poor quality, or improperly installed, which resulted in damage and cracking from the regular and intended use of the toilet. I find that the Tenant is not responsible for repairing damage which they did not cause by their action nor neglect.

As the Landlord has failed to prove that the Tenant breached section 32 of the Act, the Landlord's claim for \$427.35 to replace the toilet of the rental unit is dismissed, without leave to reapply.

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

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.

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

Visitor parking pass replacement: \$26.25

The Landlord claims \$26.25 for the cost to replace a visitor parking pass which was not returned by the Tenant at the end of the tenancy.

The Tenant acknowledged their failure to return this parking pass and accepted responsibility for this cost.

Therefore, under section 67 of the Act, I grant the Landlord a monetary order of \$26.25.

Replacement FOB: \$110.25

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for \$110.25 to replace the FOB access key.

Based on both parties testimony, I find that a FOB in perfect condition was provided at the start of the tenancy, and that the FOB became cracked exposing the battery during the tenancy.

I do not find this damage to the FOB reasonable wear and tear. The regular use of a FOB access key (tapping to unlock doors) should not result in such serious cracking of the protective cover. I find it likely that the Tenant's action or neglect during this tenancy resulted in the damage to the FOB, and that this damage impacts the functionality of the FOB.

I find the Landlord has proven the value of their loss by providing a copy of the invoice for the replacement FOB. I find the Landlord minimized their loss by only replacing the damaged FOB, rather than replacing all the access devices or re-keying the locking systems.

Therefore, I find the Landlord is entitled to a Monetary Order of \$110.25 for the cost to replace the FOB under section 67 of the Act.

Replacement mailbox key: \$30.45

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has failed to prove the value of their loss for the replacement mail key.

I find that both parties gave equally convincing testimony about whether a mailbox key was returned at the end of this tenancy.

However, a landlord is required to prove the value of their loss, by providing evidence that they in fact suffered a loss and the amount of that loss (in the form of a receipt or invoice), in order to prove their claim above and beyond the 'he said she said' of verbal testimony.

As the Landlord has failed to provide any receipt or invoice for the mail key they claim to have replaced, I find that the value of the Landlord's loss has neither been established nor proven.

Therefore, the Landlord's claim for \$30.45 for the replacement mailbox key is dismissed, without leave to reapply.

Cleaning: \$650.00

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has failed to prove their claim for \$650.00 to clean the rental unit at the end of the tenancy.

Section 37 of the Act says that a Tenant must leave the rental unit reasonably clean at the end of the tenancy.

The Act does not require a Tenant to leave the rental unit perfectly clean, or in a condition that is 'move in ready'. On review of the photo evidence before me, and the Tenants evidence that they hired a professional cleaning company, I find that the rental unit was left in a reasonably clean condition. The Landlord's evidence of some small missed areas, such as under appliances, missed vents, or some unwiped walls, does not convince me that they required \$650.00, or 13 hours, of cleaning to bring the unit to a 'reasonable' condition of cleanliness. I find that the Tenant complied with section 37 of the Act.

The Landlord chose to hire a cleaner to bring the unit to a perfectly clean and move in ready condition, but this is not a requirement of the Tenant under the Act, and is therefore the Landlord's own cost to bear.

Therefore, the Landlord's claim for \$650.00 for cleaning of the rental unit is dismissed, without leave to reapply.

Carpet cleaning: \$236.25

Section 37 of the Act says a tenant must leave the rental unit reasonably clean at the end of a tenancy.

Tenancy Policy Guideline 1 says that if a unit has carpet, the Tenant must steam clean or shampoo the carpet, or hire a professional to do so, at the end of the tenancy.

Based on the Tenant's own testimony, the carpets of the rental unit were not steam cleaned or shampooed at the end of the tenancy.

Therefore, I find that the Tenant breached section 37 of the Act by not cleaning the carpets of the rental unit.

I find the Landlord is entitled to a Monetary Order of \$236.25 for the cost to clean the carpets of the rental unit.

Parking space rent: \$3300.00

Under the tenancy agreement (term 3), the Tenant was allotted two parking spaces, included with the rent for this tenancy. The agreement explicitly states that the Tenant is entitled to the exclusive use of two parking spaces.

There is no section of the Act, regulation, or tenancy agreement which prohibits or otherwise restricts a Tenant from renting out parking spaces included with their rent if they do not need to use those spaces themselves. There is no section of the Act, regulation, or tenancy agreement which entitles the Landlord to recover any amount the Tenant gains from renting out their parking spaces which are included with their tenancy agreement.

I am not convinced by the Landlord's argument that the Tenant should have informed them they did not need two parking spaces so the Landlord could instead profit from the additional space.

Under section 27 of the Act, had the Landlord revoked the Tenant's right to exclusive use of the two parking spaces included with the tenancy agreement, the Landlord would have been required to reduce the rent accordingly due to this restriction of an originally agreed upon facility included with the tenancy.

Therefore, I find that the Tenant did not breach any section of the Act, regulation, or tenancy agreement by renting out their additional parking space during this tenancy.

The Landlord's claim for \$3300.00 to recover the Tenant's parking space rent 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 Order requested?

Section 38 of the Act states that within 15 days of the date that the landlord receives the tenant's forwarding address in writing a landlord must repay the deposits to the tenant or make an application for dispute resolution to claim against them.

As the forwarding address was provided on February 1, 2025, and the Landlord made their application on February 7, 2025, I find the Landlord made their application to claim against the Tenant's deposits on time, in accordance with the Act.

Under section 72 of the Act, I allow the Landlord to retain part of the Tenant's security deposit in full and final satisfaction of the monetary awards granted.

I find the Tenant is entitled to a Monetary Order for the remaining balance of their deposit, plus interest, after the Landlord's monetary award is deducted.

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

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

Conclusion

I find that the Landlord is entitled to retain **\$538.31** from the Tenant's security deposit under sections 67 and 72 of the Act.

I grant the Tenant a Monetary Order of **\$565.20** for the return of the remaining balance of their security deposit, plus interest, under sections 38 and 67 of the Act.

The Tenant must serve the Landlord with **this Order** as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

Monetary Issue	Granted Amount
Tenant's security deposit, plus interest	\$1103.51
Landlord's Monetary Order for damage to rental unit	-\$165.56
Landlord's monetary Order for loss under section 67 of the Act	-\$372.75
Landlord's filing fee	-\$100.00
Total Amount returned to Tenant	\$565.20

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 21, 2025

Residential Tenancy Branch