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
- 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

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 and/or pet damage 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 G.S., Landlord I.K. attended the hearing for the Landlord. The Tenant S.F., Tenant N.B. attended the hearing for the Tenant.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of Notice of Dispute Resolution Proceeding and Evidence

Both parties affirmed that there were no issues with service of both the Landlord's application and the Tenant's application and corresponding evidence for both applications. I find that both parties were duly served with the materials in accordance with section 88 and section 89 of the Act.

Issues to be Decided

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

Is the Landlord entitled to a Monetary order for compensation for damage or loss?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit? If not, is the Tenant entitled to the return of the security deposit and pet damage deposit?

Is the Landlord entitled to recovery the filing fee for this application?

Is the Tenant entitled to the recovery of the filing fee?

Background and Evidence

I have reviewed the evidence, including the testimony of both parties, but I will only refer to what I find relevant for this Decision.

The written tenancy agreement and addendum was provided and the parties agreed that this tenancy started on April 29, 2021, that the monthly rent was $1,850.00 and due on the first day of the month, that the Landlord received and continues the hold both the Tenant's $775.00 security deposit and $775.00 pet damage deposit. The tenancy ended on January 31, 2025.

The parties agreed that they completed a move in inspection and a condition inspection report on April 30, 2021. The Tenant confirmed that they had received a copy. The parties also completed a move out inspection on January 31, 2025, where the Tenants declined to sign the move out condition inspection report but confirmed that they did receive a copy from the Landlord.

A copy of the condition inspection report was provided in the evidence.

The parties also agreed that the Tenant's first forwarding address was received on January 24, 2025, and that the Tenant's second forwarding address was received on February 28, 2025.

Compensation for Damage or Loss

The Landlord requested for compensation due to damage sustained by the rental unit due to the Tenant's actions, and the Tenant's failure to return the rental unit in a clean condition.

The Landlord submitted a copy of their monetary order worksheet, an eleven-page index with references to a substantial amount of picture and video evidence related to the damage. The Landlord's monetary order worksheet claims for the following damage:

- General cleaning and carpet shampooing in the amount of $750.00
- Flooring replacement in the amount of $2,381.40
- Kitchen sink repair in the amount of $634.15

- Toilet seat replacement in the amount of $19.98
- Screen door replacement in the amount of $198.00
- Showerhead replacement in the amount of $35.98
- Bathtub spout replacement in the amount of $36.98

Regarding the general cleaning and carpet shampooing, the Landlords testified that the Tenants returned the rental unit in a dirty and messy condition. That the rental unit had a noticeable amount of dirt and pet hair in the living room, the closet, the laundry closet, and the kitchen. The uncleanliness of the rental unit prompted the Landlord to obtain a quote and hire cleaners to clean the entire rental unit. The Landlords stated that they do not have pictures of the condition of the rental unit from the beginning of the tenancy.

Regarding the flooring replacement, the Landlords stated that the vinyl flooring at the rental unit is approximately eight to ten years old, and the Tenants returned the rental unit with unrepairable damage on the flooring throughout the entire rental unit. Damage such as burn marks, spills, warping, and bubbling was present. The Landlords testified that they received a quote from a contractor, but the work has not been completed yet due to a lack of funds. The Landlords stated that they do not have pictures of the flooring at the beginning of the tenancy.

Regarding the kitchen sink replacement, the Landlords testified that the Tenant notified the Landlord that the sink was leaking on January 26, 2025. The Landlords stated that a plumber discovered that the garburator had been damaged due to user error. The Landlords affirmed that the garburator is original to the rental unit.

Regarding the toilet seat replacement, the Landlords claimed that the Tenants caused damage to the toilet seat, that the toilet seat was in brand new condition at the beginning of the tenancy, and that the Landlord had to replace the toilet seat.

Regarding the screen door replacement, the Landlords testified that the Tenants damaged the screen door by misusing it and that it has become misaligned from its track. The Landlords elaborated that the misalignment prevents the screen door from properly closing. The Landlords stated that the screen door was in brand new condition at the beginning of the tenancy.

Regarding the showerhead and bathtub spout, the Landlords testified that they were both damaged by the Tenants and that they were in brand new condition at the beginning of the tenancy.

The Tenants disputed the Landlord’s claims for damage and declared that they had returned the rental unit in a reasonably clean condition.

The Tenants submitted a substantial amount of copies of their own picture and video evidence from the end of the tenancy.

The Tenants testified that the condition of the kitchen cabinets, the kitchen in general, the bedroom carpet, the living room flooring was returned in a reasonably clean condition. The Tenants affirmed that they had lived at the rental unit for four years without any issues, and that an inspection took place in November of 2024 where the Landlords did not find any problems with the rental unit. The Tenants stated that they had cleaned and shampooed the flooring and the carpets themselves before they vacated, and emphasized that the Act and the tenancy agreement does not require them to have the flooring or the carpets professionally cleaned.

The Tenants stated that the kitchen sink garburator was extremely old, and that the garburator and the bathroom showerhead and bathtub spout had simply suffered from wear and tear.

Compensation for Loss of Rental Income

The Landlord requested for compensation and alleged that the Tenant's failure to provide a valid notice to end tenancy resulted in a loss of rental income in January of 2025.

The Landlord elaborated that the Tenants provided their notice to end tenancy on January 5, 2025, with an effective date of January 30, 2025. The Landlord submitted that this was not a valid notice to end tenancy because the Tenant had not provided a sufficient amount of notice as required under the Act. The Landlords submitted a copy of the Tenant's notice in the evidence. Despite this, the Landlords testified that the parties reached an agreement by email, that the tenancy would end on January 31, 2025, and that the Tenant would compensate the Landlord the sum of $950.00 for the improper notice. The Landlords affirmed that they have not received this compensation yet.

The Tenants submitted that the parties did not enter into an agreement regarding the abovementioned $950.00 compensation. The Tenants referred to the email communications in the evidence from between January 15 to January 16, 2025, and submitted that the compensation was offered on a condition that the parties would also sign a mutual agreement, which the Landlord refused to do.

The Tenants requested for the return of the security deposit, the pet damage deposit, plus the doubling provisions provided for under the Act.

Analysis

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

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 damages or loss as a result of the violation
3. The value of the damage or loss 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 37 of the Act requires a tenant to leave the rental unit in a reasonably clean and undamaged condition except for reasonable wear and tear.

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 financial loss incurred due to the Tenant's breach of the Act, specifically for cleaning of the carpets at the rental unit.

Residential Tenancy Branch Policy Guideline #1 states that a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

While the Tenants testified that they had personally shampooed the carpets themselves, I find that the Tenants have not provided any evidence to support this claim.

Subsequently, I am only able to determine the cleanliness of the carpets at the end of the tenancy by referring to the picture and video evidence submitted by each party and for this claim, I prefer the Landlord's picture evidence, specifically the pictures showing the uncleanliness of the bedroom carpets where they meet the baseboards.

In this case, it is clear to me that the carpets of the rental unit were returned in a manner that is not consistent with section 37 of the Act or Guideline #1. This satisfies the first and second elements of the four-point test.

I accept the Landlord's testimony and quote evidence to demonstrate the value of the Landlord's loss. I find that the Landlord acted reasonably by hiring cleaning company to perform the carpet cleaning for a reasonable cost. This satisfies the third and fourth condition of the four-point test.

Regarding the, the flooring replacement, the kitchen sink garburator repair, the replacement toilet seat, the replacement screen door, and the replacement showerhead and bathtub spout, I find that the Landlord has submitted insufficient evidence to overcome the Tenant's opposing testimony and evidence, especially that the above

items are not victim of reasonable wear and tear. For example, there is a lack of evidence to demonstrate the condition of the above items at the beginning of the tenancy, to contrast with the condition of the above items at the end of the tenancy. This does not contribute to the Landlord's claims. Moreover, based on the Landlord's own account that the flooring is likely eight to ten years old and the garburator is original to the rental unit without any corroborating evidence to pinpoint the exact age of the two items, I find it more likely than not that the flooring and the garburator was at or near the end of their life expectancies and not the liability of the Tenant. As for the toilet seat replacement, the screen door replacement, and the replacement showerhead and bathtub spout, I am not persuaded by the Landlord's oral submissions that the items were brand new at the beginning of the tenancy given the lack of evidence to corroborate the Landlord's claims. The Landlord's request for compensation for the items mentioned in this paragraph are dismissed, without leave to reapply.

Consequently, under section 67 of the Act, I find that the Landlord is entitled to a Monetary Order, in the amount of $126.00 for the carpet cleaning portion of their cleaning quote dated February 5, 2025. I note here that the Monetary Order includes tax the Landlord incurred.

Is the Landlord entitled to a Monetary order for compensation for damage or loss?

The abovementioned four-point test is to be applied here.

There are two issues to be addressed here, whether the parties have entered into an agreement for the Landlord to receive compensation because of the early end of the tenancy, and whether the early end of the tenancy created a loss of rental income for the Landlord.

I have examined the Tenant's notice to end tenancy dated January 5, 2025, I have also examined the email communications between the parties from January 5, 2025, to January 24, 2025. I assign the most significant weight to the email message dated January 15, 2025, where the Tenant presented to the Landlord:

> "We are okay with $950 only on one condition, that you sign the mutual agreement form to end tenancy on 31st Jan, so we both don't have any other issues in the future. I have attached the form here with [Tenant N.B.] and my signature. We would like to end tenancy in good terms. The payment will be made to you on 30th Jan, as that's when we'll receive our paycheques. Thank you."

And the Landlord's response dated January 16, 2025:

> "I agree to your request to end the tenancy on Jan 31st 2025 with the $950 compensation payment given on Jan 30th 2025. You can take this email as acceptance to your request to end tenancy which includes the compensation.

> Having chatted with the tenancy board again today, they have informed me that I do not need to sign the agreement as this email is sufficient for our mutual agreement to end the tenancy with the compensation. Please confirm what time on Jan 31st we can do the move out inspection and get the keys back from you. Thanks"

Was there an agreement formed?

In my view, based on the email communications provided above, the Tenant's clearly communicated the terms of the agreement relating to compensation for ending the tenancy by the end of January 2025, which must include the signing of a mutual agreement to end tenancy form. It is also clear to me that the Landlord did not agree to the Tenant's term that a mutual agreement form must be signed.

Based on this, I find that the parties did not have a meeting of the minds – an essential element of a binding contract, and therefore an agreement was not entered into regarding the compensation for the early end of the tenancy. As a result, I find that the Landlord is not entitled to compensation based on any binding agreements formed between the parties.

Has the Landlord satisfied the four-point test?

Section 45 of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) 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.

In other words, the Tenant's notice to end tenancy must be served before the rent due date, with an effective date before the beginning of the next month where rent is due.

In these circumstances, I accept the Landlord's claim that the Tenant failed to provide a notice to end tenancy in compliance with section 45, thereby satisfying the first point of the four-point test.

However, I find that the Landlord has not demonstrated how the Tenant's breach contributed to a loss in the amount of $950.00 for the Landlord. I find that the Landlord did not submit any meaningful material to demonstrate how they arrived at their calculation that the Tenant is responsible for compensating the Landlord the amount of compensation claimed. Consequently, I find that the Landlord failed to satisfy the second and third element of the four-point test, and the test fails.

The Landlord's request for compensation for loss of rental income is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit? If not, Is the Tenant entitled to the return of the security deposit and pet damage deposit?

Section 24 and section 36 of the Act provides for the consequences, specifically extinguishment of the right to claim against the security damage or pet damage deposit if the Landlord fails to conduct the move in and move out condition inspections, and if the Landlord fails to provide copies of the reports to the Tenant.

In this case, both parties acknowledged that there was a move in and move out condition inspection report and both parties acknowledged that the Tenant was provided with copies of the condition inspection reports. Therefore, no extinguishment or consequences from section 24 and section 36 of the Act is applicable here.

Section 38(1) of the Act states requires a landlord to return the security deposit and pet damage deposit, or make an application to claim against the deposits within 15 days after the later of either the tenancy ending or receiving the forwarding address. Should a landlord fail to comply with section 38(1), the landlord (a) must not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage, or both.

In this case, the parties agreed that the tenancy ended on January 31, 2025. The parties also agreed that the forwarding address was first received on January 24, 2025. The fifteen day timeline begins on January 25, 2025, according to the definition and rules regarding the count of days in the Rules of Procedure.

According to Residential Tenancy Branch records, the Landlord's application was filed on February 13, 2025. I find that the time between January 25, 2025, to February 13, 2025, exceeds 15 days. Therefore, the Landlord has failed to comply with section 38(1) of the Act, specifically that the Landlord was not entitled to retain all or a portion of the Tenant's security deposit or pet damage deposit.

Based on the above, I find that the Tenant is entitled to the return of double the amount of the security deposit – the sum of $1,550.00 and double the amount of the pet damage deposit – the sum of $1,550.00 plus interest on the original deposits – the sum of $78.67 pursuant to section 38(6) and section 67 of the Act. The amounts awarded add up to a total amount of $3,178.67.

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

Is the Landlord entitled to recovery the filing fee for this application?

As the Landlord was largely unsuccessful in 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 the recovery of the filing fee?

As the Tenant was successful in their application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

Conclusion

Given that both parties were granted some form of monetary relief in their applications, under section 72 of the Act, I set off the amounts granted in the orders against each other, and ultimately the Tenant is granted a Monetary Order for the remaining balance of $3,152.67.

I grant the Tenant a Monetary Order in the amount of $**3,152.67** under the following terms:

Monetary Issue	**Granted Amount**
a Monetary Order for the Tenant for the return of their deposit(s), plus interest from the Landlord	$3,178.67
A Monetary Order granted to the Landlord for compensation for damage or financial loss	Less $126.00
authorization to the Tenant to recover the filing fee for this application from the Landlord under section 72 of the Act	$100.00
Total Amount	**$3,152.67**

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 14, 2025

Residential Tenancy Branch