

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
- 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

And the Tenant's cross-application for:

- a Monetary Order for the return of the Tenant's security deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties each acknowledged receipt of the proceeding package and evidence from the other party.

Although the Tenant indicated they did not receive a copy of the invoice for the repair of the blinds from the Landlord, I find the Tenant was able to respond to the claim. I find little prejudice to either party in allowing the evidence.

Under section 71(2)(c) of the Act, I find sufficient service of the Proceeding Package and evidence upon each party.

Issues to be Decided

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

Is the Landlord entitled to retain a portion of the Tenant's security deposit?

Is the Tenant entitled to the return of their security deposit?

Is either party entitled to recover their filing fee for this application?

Background and Evidence

Evidence was provided showing that this tenancy began on December 31, 2021, with a monthly rent of \$1,730.00, due on the first day of the month, with a security deposit in the amount of \$900.00, which was provided November 19, 2021. Interest of \$45.51 has accrued on the deposit to the date of the hearing.

The Landlord holds the deposit in trust pending the outcome of the hearing.

It is not disputed that the tenancy ended December 30 or 31, 2024. It is not disputed that the parties did not complete a move in or move out condition inspection report as required under the Act and regulations.

The Tenant's father provided the Tenant's forwarding address to the Landlord via email on February 11 and 17, 2025. The Tenant says they also provided their forwarding email address directly to the Landlord through WhatsApp on February 19, 2025.

The Landlord applied to retain the deposit on February 19, 2025.

The Landlord requests to retain \$472.50 from the Tenant's deposit to cover the cost of repairing one set of blinds in the rental unit.

The evidence includes photographs of the blinds, an invoice for the repair of the blinds, and copies of communications between the parties.

The Tenant says the bead pull cord of the blind broke on the morning of December 5, 2024, when the Tenant was using the blinds normally. The Tenant said they taped the blinds, so they remained open temporarily. The Tenant provided evidence that they reported the damage and provided a photograph to the Landlord as soon as the damage occurred.

The Landlord believes the Tenant's boyfriend damaged the blinds through improper use. The witness for the Landlord recalls the Tenant's boyfriend apologized for the damage to the blinds.

The Tenant says their boyfriend apologized on behalf of the Tenant as a matter of politeness.

The Landlord says the Tenant's attempt to tape the blinds left them in a dangerous position.

The Landlord says they believe the blinds were broken by the Tenant's boyfriend because they apologized for the damage, and because they find it likely the boyfriend used excessive force to operate the blinds given their size and stature. The Landlord believes the Tenant's boyfriend was not aware of how to use the blinds properly because they were only visiting the unit.

The evidence indicates the blinds were approximately 9 years old at the end of the tenancy.

Analysis

I note when two parties provide equally plausible, yet conflicting accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient documentary evidence over and above their testimony to establish their claim.

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

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.

Under Policy Guideline 1, at page 5: "The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc."

Under Policy Guideline 40, window coverings are estimated to have an approximate lifespan of 15 years.

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

Section 21 of the regulations says:

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.

Given the lack of inspection reports in this matter and the Tenant's dispute of themselves or their guest causing the damage to the blinds through improper use, I find

the Landlord is required to provide a preponderance of evidence to establish their claim for damages.

I find there is insufficient evidence that the Tenant or their guest misused the blinds to cause the damage. There is no evidence that the Tenant deliberately or negligently damaged any other items in the rental unit. I find the Tenant acted honestly to report the damage immediately. This implies a level of care from the Tenant.

I do not find an apology from the Tenant's guest is an admission of guilt. I find it likely an apology was provided to be polite. I do not find the stature or gender of the Tenant's guest to be determinative of whether they caused damages through negligent use of the blinds.

On a balance of probabilities, given the age of the blinds, I find it likely the blinds broke during normal use. I find the Landlord is responsible for the cost of maintenance in this situation.

Therefore, since the Landlord has failed to prove the damage to the blinds was caused by the deliberate or negligent actions of the Tenant or their guest, I decline to award compensation for the cost of the repair.

Is the Landlord entitled to retain a portion of the Tenant's security deposit?

As the Landlord's claim for compensation was not successful, I find they are not entitled to retain any portion of the Tenant's deposit under section 38 of the Act.

Is the Tenant entitled to the return of their security deposit?

Under section 38 of the Act, since they have not proven any claim against the deposit, the Landlord must return the deposit, plus interest to the Tenant, in the amount of \$945.51.

The Tenant has requested return of double their deposit pursuant to section 38.1 of the Act based on the Landlord's extinguishment of their right to retain the deposit.

I find the Landlord's right to claim against the security and pet deposit for damage to the unit was extinguished under section 36(2) of the Act, because the Landlord did not complete the required inspection reports.

Under Policy Guideline 17 if the Landlord has claimed against the deposit for damage to the rental unit and the Landlord's right to make such a claim has been extinguished under the Act, the Arbitrator will award double the deposit returned to the Tenant.

The Landlord says they have not yet received the Tenant's forwarding address as required under the Act, and they should be allowed 15 days from that date to return the deposit before the doubling provision applies.

The Landlord says it would not be fair for the Tenant to rely on the formal doubling provisions under the Act if they have not complied with this formal service requirement.

I accept the Landlord's submissions that the Tenant has not complied with the formal requirements for service of the forwarding address under section 88 of the Act.

I find the Tenant was granted an order for substituted service on March 6, 2025, to serve the Proceeding Package to the Landlord via WhatsApp. I find the Tenant's forwarding address has been supplied in writing to the Landlord within the Proceeding Package.

I exercise my authority under section 71(2)(c) of the Act, to deem that the Tenant's forwarding address has been sufficiently served to the Landlord as of the date the Landlord receives this decision.

Therefore, the Landlord has 15 days from the date of receiving this decision to return the deposit plus interest to the Tenant. If the Landlord fails to return the deposit within 15 days of receiving this decision, the Tenant may apply for \$900.00 compensation under section 38.1 of the Act.

Is either party entitled to recover their filing fee for this application?

As the Landlord was not successful in their application, I dismiss their request for their filing fee under section 72 of the Act.

As the Tenant's application was successful, I award the Tenant the return of their filling fee under section 72 of the Act.

Conclusion

I dismiss the Landlord's application in its entirety, without leave to reapply.

I grant the Tenant a monetary order for the return of their deposit plus interest and their filing fee for this application pursuant to sections 38 and 72 of the Act, in the amount of **\$1,045.51**.

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.

Under section 71(2)(c) of the Act, I deem that the Tenant's forwarding address has been sufficiently served to the Landlord as of the date the Landlord receives this decision. If the Landlord fails to return the Tenant's deposit within 15 days of receiving this decision, the Tenant may apply for \$900.00 compensation under section 38.1 of the Act.

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 8, 2025

Residential Tenancy Branch