

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

The Tenant filed a cross-application, which was heard at the same time, for:

- compensation for money owed under section 67 of the Act
- a request for the return of the 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

I find the parties exchanged their Proceeding Packages and evidence by email in accordance with the Address for Service form, which was signed by both parties in March 2024, indicating their agreement to receive documents by e-mail.

Issues to be Decided

Is the Landlord entitled to a monetary order for damage to the rental unit under sections 32 and 67 of the Act?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to compensation under section 67 of the Act?

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

Is either party entitled to recover their filing fee under section 72 of the Act?

Facts and Analysis

Based on the evidence and submissions from both parties I find as follows:

- The Tenancy began on May 1, 2024, with a monthly rent of \$3,200.00 due on the first day of each month.
- The Tenant provided a security deposit of \$1,600.00 on March 18, 2024. Interest of \$44.56 has accumulated on the deposit from that date until the date of this hearing, for a total value of \$1,644.56, which the Landlord holds in trust.
- The parties completed a move in inspection on May 1, 2024.
- The tenancy ended on May 30, 2025.
- The parties completed a move out inspection on May 30, 2025.
- The Landlord provided a copy of the inspection report to the Tenant on June 10, 2025.
- The Landlord received the Tenant's forwarding address in writing by email on June 10, 2025.
- The Landlord applied to retain the security deposit on June 24, 2025, to cover the cost of repairs to the bathroom countertops, which they allege were damaged by the Tenant.
- The Landlord provided photographs and a receipt for \$1,655.00 for the cost to repair and seal the quartz countertops in the bathrooms.
- The countertops were installed sometime in 2017, and they are currently approximately 8 years old. They have not been sealed or professionally treated since installation, although they have been professionally cleaned between tenancies.
- There was a circular mark on the countertop to the right of the sink in the main bathroom prior to this tenancy and the previous tenancy.
- The occupant who resided in the rental unit for 9 months prior to the Tenant, did not seem to have caused any additional damage to the countertops.

The Tenant says the countertops were damaged at the outset of the tenancy, indicating an issue with the finish or quality of the countertops. The Tenant says they were not provided any special instructions for how to care for or use the countertops. The Tenant claims they did not deliberately or negligently damage the countertops. They say the damage occurred as a result of normal daily use. The Tenant believes the damage is wear and tear.

The Tenant obtained a quote to repair the countertops for the cost of \$200.00 per countertop, plus \$50.00 for materials, and 5% tax, which they say the Landlord failed to consider. The Landlord says they did not have confidence in the quality of work that would be provided for that price. The Landlord claims the company did not respond to their inquiries. The Tenant disputes that the Landlord contacted the company at all.

Is the Landlord entitled to a monetary order for damage to the rental unit under sections 32 and 67 of the Act?

Under Policy Guideline 16 regarding compensation for damage or loss, to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement.
- loss or damage has resulted from this non-compliance.
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 32 of the Act, the Tenant is responsible for any damage to the rental unit caused by their own actions or neglect. According to Policy Guideline 1, and section 32 of the Act, the Tenant is not responsible for reasonable wear and tear to the rental unit or site.

I find the term “reasonable” in section 32 of the Act, imparts a duty upon the Tenant to use the unit with care. I find the Tenant would have noticed additional marks appearing during their tenancy. The Tenant could have mentioned this to the Landlord or taken some care to use a basket or tray for their toiletries during their tenancy. They do not appear to have done so.

I find the Landlord’s evidence indicates damage to the countertops after this tenancy, which did not occur with the previous tenancy. I find the damage present on the countertops at the end of the tenancy was excessive in comparison to the previous tenancy. Therefore, I find the Landlord has established that the Tenant is at least partly responsible for the cost of repairs.

I find both parties were aware of a mark on the countertop at the start of the tenancy, meaning the potential for damaging the countertop was reasonably foreseeable.

According to Policy Guideline 16 and section 7 of the Act, the Landlord has the duty to do whatever is reasonable to minimize their damage or loss. The Landlord claims they fulfilled this obligation by obtaining more than one quote for repairs and choosing a less expensive repair. However, prior to the tenancy or during the tenancy, the Landlord could have provided special instructions or a tray for the use of the countertop or had the countertop sealed so that it was not so easily damaged. They do not appear to have done so.

I find the Landlord failed to mitigate their losses at the outset of the tenancy because they failed to seal the countertop or provide special instructions for its use.

Therefore, I must determine the portion of repairs for which the Tenant should be responsible in light of the Landlord's failure to mitigate their losses.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator has discretion to determine the amount of that damage or loss and order compensation.

I find the Landlord has not shown that they reasonably considered the repair quote provided by the Tenant. As a limit on the award to the Landlord, I will use the cost of repairs presented by the Tenant. I will add \$210.00 to that quote to account for the second bathroom, totaling \$682.50. I find the Tenant proportionally responsible for 40% of this cost because I find the Landlord bears the greater responsibility toward their loss as the owner of the property and for their failure to take steps to prevent the damage.

Based on the above calculation, under section 67 of the Act, I find it reasonable to award compensation of **\$273.00** to the Landlord as compensation for a portion of the repairs required to the countertop.

Is the Landlord entitled to retain the security deposit?

I find the Landlord applied to retain the Tenant's deposit within 15 days of receiving the Tenant's forwarding address in writing as required by section 38 of the Act.

I find the Landlord met the requirements to complete inspections of the rental unit and provide the report to the Tenant.

Under section 72 of the Act, I authorize the Landlord to retain \$273.00 from the security deposit in satisfaction of the monetary award.

Is the Tenant entitled to compensation under section 67 of the Act?

The Tenant has requested compensation for the cost of notary fees to prepare their affidavit for the hearing.

The Act does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the Act.

The Arbitrator's abilities to award compensation are restricted by Section 67 of the Act which are described above and limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party.

Therefore, I have no ability to return the costs associated with preparation for a hearing. I dismiss the Tenant's claim for the costs of the notary fees, without leave to reapply.

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

I find the Tenant is entitled to the return of the remainder of their security deposit plus interest in the amount of **\$1,371.56** ($\$1,644.56 - \$273.00 = \$1,371.56$).

Is either party entitled to recover their filing fee under section 72 of the Act?

As each party was partly successful in their claims, I find each party will bear the cost of their own filing fees under section 72 of the Act.

Conclusion

I authorize the Landlord to retain \$273.00 from the security deposit as full satisfaction of their claim under sections 38 and 67 of the Act.

I grant the Tenant a monetary order in the amount of **\$1,371.56** for the return of the remainder of their security deposit under sections 38 and 67 of the Act. 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.

I dismiss the remainder of each of the applications, without leave to reapply.

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: September 5, 2025

Residential Tenancy Branch