

## **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

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 their 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

This is a reconvened hearing. The Landlord's witness did not have the opportunity to provide their testimony, and the Tenant did not have the opportunity to complete their submissions.

At the outset of the hearing, the Landlord's witness was not present during the hearing. The Landlord's agent was provided with the opportunity to contact the witness to attend the hearing. The Landlord's agent advised to proceed the hearing without the witness and did not raise any issues with proceeding.

Residential Tenancy Branch Rules of Procedure 7.4 enables the Arbitrator to restrict evidence under consideration to evidence referred to by the parties during the hearing.

In accordance with Residential Tenancy Branch Rules of Procedure 7.4, only the evidence referred to by the parties during the hearing will be considered.

### **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 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 a Monetary Order for the return of all or a portion of their security deposit?

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

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

## **Background and Evidence**

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

The parties testified that this tenancy began on February 14, 2025, with a monthly rent of \$11,250.00, due on the fourteenth day of the month. The Tenant paid a security deposit of \$3,000.00.

### **Cleaning - \$560.00**

The Landlord testified the following:

- the hood fan and cooktop were heavily soiled with grease
- the microwave and oven required extensive cleaning from the buildup of grease and grime

The Landlord provided the following as evidence:

- an invoice dated May 14, 2025, in the amount of \$560.00 for cleaning the unit

The Tenant testified the following:

- on page two of six of the tenancy agreement, it shows that housekeeping was included as part of the tenancy

### **Repairs - \$1,207.50**

The Landlord testified the following:

- at the end of the tenancy, five walls in the unit had scuff marks and chips
- under the section walls and trim on page two of the move-out condition inspection report it shows there were scratches on the walls

The Landlord provided the following as evidence:

- undated photos that they claim show the condition of the unit at time of move-out

The Tenant testified the following:

- the Landlord did not raise any issue at the time of move-out

The Tenant provided the following as evidence:

- a text message to the Landlord dated Fri, 14 Feb at 8:59 PM that states, "Just noticed a few things about the unit. We realized that there are some scratches on the walls of the hallway just now."

### **Security Deposit - \$3,000.00**

The following is undisputed:

- the Landlord is retaining the full amount of the security deposit in the amount of \$3,000.00
- the Tenant provided their forwarding address for the return of their security deposit to the Landlord on by registered mail on April 16, 2025
- the Tenant and Landlord together completed a move-in and move-out condition inspection report

The Landlord testified the following:

- both copies of the move-in and move-out condition inspection report were provided to the Tenant

The Tenant testified the following:

- they did not receive a copy of the move-in condition inspection report
- they received a copy of the move-out condition inspection report with the Landlord's Notice of Dispute Resolution Proceeding Package (Proceeding Package) – The Landlord provided as evidence the Proof of Service for the Proceeding Package and a copy of the outgoing email that shows the Tenant was served by email on May 4, 2025

## **Analysis**

**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.

Residential Tenancy Policy Guideline 16(D) provides the following:

- In order to determine the amount of compensation that is due, the Arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation, or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a Landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

To be awarded compensation for a breach of the Act, the Landlord must prove all of the following:

#### Four-Point Test

- 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

Based on the evidence, the testimony of the parties, and on a balance of probabilities, I find the Landlord did not provide sufficient evidence such as timestamped photographs of the condition of the unit and the walls at the time of move-in and move-out, for me to be able to determine the difference of the condition of the unit and the walls at the start and end of the tenancy (point one and point two of the four-point test).

Furthermore, I find the Landlord did not provide any evidence that these amounts were paid, such as a receipt to confirm payment as required under Residential Tenancy Policy Guideline 16(D) (point three of the four-point test). The Landlord only provided an invoice for the cleaning.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act 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 award requested or is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?**

Section 23 of the Act provides the following:

(1)The Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2)The Landlord and Tenant together must inspect the condition of the rental unit on or before the day the Tenant starts keeping a pet or on another mutually agreed day, if

(a)the Landlord permits the Tenant to keep a pet on the residential property after the start of a tenancy, and

(b)a previous inspection was not completed under subsection (1).

(3)The Landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4)The Landlord must complete a condition inspection report in accordance with the regulations.

(5)Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

(6)The Landlord must make the inspection and complete and sign the report without the Tenant if

(a)the Landlord has complied with subsection (3), and

(b)the Tenant does not participate on either occasion.

Section 24(2) provides the following:

The right of a Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord

(a)does not comply with section 23 (3) [*2 opportunities for inspection*],

(b)having complied with section 23 (3), does not participate on either occasion, or

(c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 35 of the Act provides the following:

(1)The Landlord and Tenant together must inspect the condition of the rental unit before a new Tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2)The Landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3)The Landlord must complete a condition inspection report in accordance with the regulations.

(4)Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

(5)The Landlord may make the inspection and complete and sign the report without the Tenant if

(a)the Landlord has complied with subsection (2) and the Tenant does not participate on either occasion, or

(b)the Tenant has abandoned the rental unit.

Section 36 (2) of the Act provides the following:

Unless the Tenant has abandoned the rental unit, the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord

(a)does not comply with section 35 (2) [*2 opportunities for inspection*],

(b)having complied with section 35 (2), does not participate on either occasion, or

(c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 18(1) of the Residential Tenancy Regulation (Regulation) states the following:

The Landlord must give the Tenant a copy of the signed condition inspection report

(a)of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

(b)of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i)the date the condition inspection is completed, and

(ii)the date the landlord receives the tenant's forwarding address in writing.

The Landlord claims that they provided the Tenant with a copy of the move-in and move-out condition inspection report. The Tenant claims the Landlord never provided them a copy of the move-in condition inspection report and the move-out condition report was only provided with the Landlord's proceeding package on May 4, 2025.

Based on the evidence, the testimony of the parties, and on a balance of probabilities, I find that the Landlord did not provide sufficient evidence that a move-in condition inspection report was provided to the Tenant. It is more likely than not that a copy of the move-in condition inspection report was never provided to the Tenant. Therefore, the Landlord extinguished their right to claim against the security deposit in accordance with sections 23 and 36 of the Act, and section 18 of the Regulation.

Section 38(5) and (6) of the Act state that when the Landlord's right to claim against the security deposit is extinguished, the Landlord may not make a claim against it and must pay the Tenant double the amount of the security deposit.

I find that since the Landlord did not comply with section 38 of the Act, The Landlord is required to provide the Tenant their security deposit doubled in the amount of \$6,000.00, plus interest. The Tenant is entitled to a monetary order in the amount of \$6,025.06.

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

As the Landlord was not successful in this 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 recover the filing fee for this application from the Landlord?**

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

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$6,125.06** under the following:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for the return of their security deposit doubled, plus interest under section 38 of the Act	\$6,025.06
authorization to recover the filing fee for their application from the Landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$6,125.06</b>

The Tenant is provided with this Order, 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 and enforced in the Provincial Court of British Columbia (Small Claims 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: January 13, 2026

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Residential Tenancy Branch