

DECISION

Introduction

This hearing dealt with cross-applications including:

The landlord's February 6, 2023, 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

And the Tenants' March 16, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order for return 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 landlord under section 72 of the Act

Service of Notice and Evidence

The parties accepted service of Notice and Evidence related to respective claims.

Issue(s) to be Decided

Tenants

- Are the tenants entitled to a Monetary Order for return of their damage deposit?
- Are the tenants authorized to recover the filing fee for this application from the landlord under section 72 of the Act

Landlord

- 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 award requested?
- Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy agreement started September 1, 2019. Monthly rent was set at \$2,000.00 and a \$1,000.00 security deposit was collected. The parties agreed that the tenants returned the keys to the rental unit on January 19, 2023, and that they provided their forwarding address on January 22, 2023. The parties agreed that move-in condition inspections and move-out condition inspections were completed, and copies of condition inspection reports were provided.

The tenants occupied the three-bedroom rental unit on the main floor of the residential property. The landlords resided on the upper floor of the property. The parties agreed that the residential property has since been sold. The landlord stated that they listed the property for sale after the tenancy ended, and that an accepted offer was received in February 2023 which then closed in May 2023.

The parties agreed that:

- The tenancy ended by Mutual Agreement
- The Landlord issued a Notice to End Tenancy in October 2023 because the tenants had a new puppy and a new occupant
- The monthly rate of rent was increased to \$2,500.00 for the month of December 2022 due to the new occupant – the tenants accepted this increase
- Rent for January 2023 was prorated and paid as required by the landlord

The landlord submitted a claim for compensation for damage in the amount of \$2,807.88. However, I note that their actual claim for damage as a standalone claim, with receipts provided, equals \$1,586.56, including:

- Lightbulbs \$45.22
- Cleaning \$850.00
- Repairs and Painting \$629.74
 - Includes \$200 for landscape ties
- Ozone Machine Rental \$61.60

Regarding the lightbulbs, the landlord stated that the tenants did not replace missing bulbs. The tenants stated that they tried to replace the bulbs, however, they were informed by the landlord that the bulbs were already replaced. The tenants noted that the dates on the receipts provided for the light bulb purchased is after the move-out condition inspection were completed and the tenants offered to replace the bulbs.

Regarding the claim for cleaning, both sides provided extensive pictures of the rental unit on January 19, 2023. Neither side provided photos from when the tenancy started. The parties agreed that the rental unit was not clean when the tenancy started. The landlord stated that they gave the tenants a discount on rent because of this.

The tenants stated that a family friend who is a professional cleaner cleaned the rental unit for free before the tenancy ended. The landlord stated that they had professional cleaners clean the property on January 23, 2023, and were charged \$850.00 for this service. The tenants stated that they tried to contact the cleaning company identified on the cleaning invoice because they found the charge suspicious.

I reviewed the photos of the rental unit after the tenancy. The tenants' photos are general level showing a reasonably clean unit as required by section 37 of the Act. In contrast, the landlord's photos are closely zoomed in specific areas of the rental unit to capture things like dust on the top of a fan.

Regarding the claim for repairs and painting, the landlord referred to an invoice provided along with supporting photos. They stated there was a fist like hole in one wall that was mudded by the tenants but needed to be mudded again and painted. The landlord also emphasized that a towel rack was pulled off and needed to be reinstalled. The tenants denied causing any specific damage.

Regarding the landscape ties, the landlord stated that this was included in the invoice provided and that they are seeking \$200.00 in compensation. The parties agreed that the damaged items are adjacent to where the tenants would park. The landlord referred to photos submitted to emphasize that the damage to these ties was recent.

The tenants referred to their video submitted to emphasize that the landlord failed to capture the rotten section of the landscape tie when they submitted their photo of damage. The tenants admitted to accidentally driving over the ties when there was snow on the ground. The landlord stated that the landscape ties are at least 9.5 years old.

Regarding the charge for the ozone machine, the landlord stated that this was needed to remove the smell from the room where the tenants' puppy was paper trained. The tenants acknowledged using a specific room for training the puppy and stated that they ran their own ozone machine to remove the smell.

The landlord also claimed \$294.01 in compensation for poop pick up through to December 2022. The tenants acknowledged the cost of poop pick up through to

October 2022. The tenants also acknowledged that they did not give notice to the landlord that poop pick up was no longer required. The parties agreed that the poop pick up started after the landlord also got a dog, and so the contract was important to promote positive relations between the parties. The company that was hired attended to the residential property once a week to clean poop from the yard.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As shown in RTB Rule of Procedure 6.6, the applicant is responsible for establishing their claim for compensation on the balance of probabilities.

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the landlord's claim for compensation for lightbulbs, I find that they failed to establish on the balance of probabilities that they minimized their costs. I find that the tenants attempted to replace these items during the Move-Out Inspection but were told that they had already been replaced, even though the items had not yet been purchased by the landlord. I do not award compensation.

Regarding the landlord's claim for compensation for cleaning, I find that the tenants left the property reasonably clean as required by the Act. As such, I find that the landlord failed to establish on the balance of probabilities that the tenants violated the Act and that this violation resulted in the landlord paying \$850.00 for cleaning. I will nevertheless award \$200.00 to the landlord for cleaning in recognition of the need for appliances in the rental unit to be specifically cleaned after the tenants vacated. I make this award under RTB Policy Guideline 16.

Regarding the landlord's claim for compensation for \$429.74 for repairs and painting, the average expected life of an interior paint job is three years under RTB Policy Guideline 40. I therefore find that the rental unit was due to be painted when the

tenancy ended after more than three years. I also find that the tenants attempted to minimize damage by mudding the hole identified by the landlord, and that the landlord failed to establish that the towel rack was intentionally pulled out. I do not award compensation.

Regarding the landlord's claim for compensation for \$200.00 landscape ties, I find that they failed to establish their claim for compensation because they provided no evidence to suggest that the tenants caused the damage in violation of the Act, Regulation or Tenancy Agreement. I find that driving over an item placed next to a parking space is regular wear and tear under 32(4) of the Act.

Regarding the charge for the ozone machine, I find that the landlord established their claim to compensation and I award the requested \$61.60. I find that the landlord was reasonable in their claims related to removing smells associated with a puppy who was paper trained by the tenants in the room.

I order that the landlord is entitled to \$261.60 in compensation for damages.

$$\$200.00 + \$61.60 = \$261.60$$

Is the landlord entitled to a monetary order for compensation for loss?

The landlord provided proof of their receipts for their claim in the amount of \$294.01. Because the tenants did not give Notice to the landlord that the service was no longer required, I find that the landlord established their claim in the amount specified.

I order that the landlord is entitled to \$294.01 in compensation for monetary loss.

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

The parties agreed that a \$1000.00 security deposit was collected. I find that the deposit was valued at \$1,015.90 on the day of the hearing according to the online RTB Interest Calculator.

Because the landlords have established a claim for compensation in the amount of \$555.61, I order that this amount be withheld from the tenants' security deposit under RTB Policy Guideline 17.

$$\$261.60 + \$294.01 = \$555.61$$

I therefore order that the Tenants are entitled to the return of the remaining \$444.39.

I also order that this amount be doubled under 38(6) of the Act, as shown below:

$$\$444.39 \times 2 = \$888.78 + \$15.90 \text{ in Interest} = \$904.68$$

I Order that the tenants are entitled to a monetary order in the amount of \$904.68.

Recovery of filing fee for either party?

Because both parties requested compensation and both parties were partially successful in their claims, I order that neither party is entitled to recover their filing fee from the other under section 72 of the Act.

Conclusion

I grant the tenants a \$904.68 Monetary Order under the following terms:

Landlord Claims	
Compensation for Damage	\$261.60
Compensation for Monetary Loss	\$294.01
Landlord to Retain from Tenant Deposit	\$555.61
Value of Tenant Deposit	\$1,000.00
Less compensation to Landlord	\$555.61
Remaining Value of Tenant Deposit	\$444.39
Required Return of Double under 38(6) of Act	\$888.78
Plus calculated interest on day of hearing	\$15.90
Total Amount Owing to Tenants	\$904.68

The tenants must serve the landlord(s) with this Order as soon as possible. Should the landlord(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 31, 2023

Residential Tenancy Branch