

DECISION

Introduction

This hearing dealt with the Landlords' 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 recover the filing fee for this application from the Tenant under section 72 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the Tenants did not attend the reconvened hearing and the Landlords did, and I have confirmed that the Tenants were served a reminder email from the RTB for this hearing on July 5, 2024, at 4:30 AM, I consider this matter to be undisputed by the Tenants.

Preliminary Matters

In the Interim Decision dated June 10, 2024, which should be read in conjunction with this decision, this matter was separated from a Tenants' cross-application. The file number of the separated cross-application has been included on the cover page of this decision for ease of reference.

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 a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

Facts and Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

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

Evidence was provided showing that this tenancy began on March 1, 2021, with a monthly rent of \$2,800.00, due on first day of the month. The original tenancy began in 2016 but ended when the March 1, 2021, tenancy agreement was signed.

The Landlord has claimed \$35,100.00 as follows:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	Carpet Removal, Floor Install. Material		\$3,005.59
#2	Paint and Contractor		\$4,520.65
#3	Ring Security Cameras	Martin's Friends Spying	\$1,274.20
#4	Electrical		\$1,454.52
#5	Mold, Stand Up Shower Kit		\$1,627.08
#6	Rodent Traps		\$27.28
#7	Cleaning Supplies		\$83.94
#8	Loss of amenity/damages from fraud		\$7,280.00
#9	Estimated further repair costs	Shane Gibbons Quote	\$1,200.00
#10	Compensation		\$14,526.74
Total monetary order claim			\$ 35,000

To be awarded compensation for a breach of the Act, the Landlord must prove the following 4-part 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

As counsel submitted that item 10 of \$14,526.74 was to “top up” the claim to the maximum amount of \$35,000.00 and was not broken down, it was immediately

dismissed without leave to apply, as I find it fails to meet parts 3 and 4 of the 4-part test listed above and fails to comply with section 7 of the Act. Section 7 of the Act requires that the Landlord applicant do whatever is reasonable to minimize their damage or loss and I find topping up the claim to the maximum amount fails to comply with section 7 of the Act.

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

Item 1 – The Landlord has claimed \$3,005.59 for carpet removal, floor installation and materials. Counsel confirmed that the home was built in 2000 and that the rental unit (Property) had the original carpets which were about 22 years old.

Residential Tenancy Branch (RTB) Policy Guideline 40 – *Useful Life of Building Elements* (PG 40) sets the useful life of carpets at 10 years. Therefore, I find this item is 100% depreciated in accordance with RTB PG 40. Consequently, this item is **dismissed without leave to reapply**, as this item is 100% depreciated.

Item 2 – The Landlord has claimed \$4,520.65 for paint and contractor. The Landlord confirmed that the last interior paint was in 2016. As the tenancy ended in 2023 and RTB PG40 sets the useful life of interior paint at 4 years, I find this item is 100% depreciated. Consequently, this item is **dismissed without leave to reapply**, as this item is 100% depreciated.

Item 3 – The Landlord has claimed \$1,274.20 for additional Ring security cameras that the Landlord confirmed they made the decision to install based on the friend of the Tenant spying. This item was dismissed during the hearing as I find that the decision of the Landlord to install additional security cameras is recoverable from the Tenants under the Act. This item is **dismissed without leave to reapply** as a result.

Item 4 – The Landlord has claimed \$1,454.52 for “electrical”, which the Landlord described as damaged light switches and plug, and lamps and electrical fixtures removed by the Tenants. I will describe each receipt in detail below along with my findings for each receipt:

- A. Circuit breaker finder for **\$78.57** granted due to undisputed testimony that Tenants damaged electrical plugs in rental unit
- B. Cordless screwdriver for \$44.28 dismissed as this is a common tool that Landlords are expected to own and is not recoverable through the Tenants under the Act
- C. 2 LED light fixtures for **\$78.71** granted due to undisputed testimony of Tenants removing these fixtures
- D. 37-piece screwdriving bit set for \$13.42 dismissed as this is a common tool that Landlords are expected to own and is not recoverable through the Tenants under the Act

- E. Detector with wire connector for **\$26.37** granted due to undisputed testimony of Tenants removing a detector from the rental unit
- F. Receptable, switch and wire strippers for **\$70.46** granted due to undisputed testimony that Tenants damaged electrical and switches in the rental unit
- G. Additional LED light and LED bulbs for **\$89.34** granted due to undisputed testimony of Tenants removing these fixtures
- H. Lights, additional smoke alarm/carbon monoxide detector from Costco with taxes of **\$504.41** granted due to undisputed testimony of Tenants removing a second detector and more lights

I note that any of the receipts that were not legible have been dismissed due to insufficient evidence, without leave to reapply. I grant the total for item 4 in the amount of **\$847.86**. I dismiss any amount higher due to insufficient evidence, **without leave to reapply**.

Item 5 – The Landlord has claimed \$1,627.08, for a mould around the base of the fiberglass shower pan. Pursuant to RTB PG40, tubs, toilets and sinks, set a useful life of 20 years, which I find is the closest comparison. As the shower was a fiberglass original which I find is 23 years old by the end of the tenancy, I find this item is 100% depreciated. Consequently, this item is **dismissed without leave to reapply** due to full depreciation. I find it just as likely than not that the shower pan failed from age versus neglect of the Tenants.

Items 6 and 7 – Counsel confirmed that receipts for this item were not submitted, and accordingly, I find that part 3 of the 4-part test has not been met. Consequently, items 6 and 7 are **dismissed without leave to reapply**, due to insufficient evidence.

Item 8 – The Landlord has claimed loss of amenity/damages from fraud of \$7,280.00 but failed to indicate what the fraud was other than to write “If the Tenant is unwilling or unable to account for his fraud then the Landlord further claims loss of rental income for December 1, 2023 to February 17, 2024 as a reasonable proxy for disgorged profits and loss of rent, had the Landlord’s family been able to move in on December 1, 2023. This item is **dismissed without leave to reapply** as I find the Landlord may not shift the burden of proof to the respondent and that the only damages that were successful above, I find to be minor in nature, and for which the Tenants are not liable due to depreciation.

Item 9 – The Landlord has claimed \$1,200.00 for further repairs to be done to the shower, which consistent with item 5 above, I **dismiss** as I find the shower is 100% depreciated. I do not grant leave to reapply.

Item 10 was **dismissed** above for the reasons set out above.

As the Landlords’ application was partially successful, I grant the Landlords the **\$100.00** filing fee under section 72 of the Act.

I find the Landlords have established a total monetary claim of **\$947.86**, comprised of \$847.86 for item 4 and the \$100.00 filing fee.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$947.86**. Should the Tenants fail to pay the Landlords this amount, the Landlords must serve the Tenant with **this Order**, with a demand for payment letter.

The RTB website for information on how to serve and enforce a monetary order is found at:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-dispute-resolution/serving-and-enforcing-orders/monetary-order>

This decision will be emailed to both parties. The monetary order will be emailed to the Landlords only for service on the Tenants, if necessary.

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: July 15, 2024

Residential Tenancy Branch