

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 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 Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Landlord's Application

The Tenant confirmed service of the Proceeding Package and evidence.

The Landlord's agent confirmed service of the Tenant's evidence.

Tenant's Application

The Landlord's agent testified that they did not receive the Proceeding Package.

The Landlord's agent confirmed service of the Tenant's evidence.

The Tenant testified that they sent the Proceeding Package and evidence to the Landlord by registered mail.

I find that the Tenant sent the Proceeding Package and Evidence to the Landlord by registered mail on May 6, 2024, and in accordance with section 89 of the Act. The Landlord is deemed served on May 11, 2024, the fifth day after the registered mailing and in accordance with section 90 of the Act. The Tenant provided the Canada Post tracking number to confirm this service. I have included the tracking number on the cover page.

The Landlord's agent was advised in the original hearing that took place on July 9, 2024, to contact the Landlord and make arrangements with them to be provided a copy of the Proceeding Package and Evidence that the Tenant's sent to them.

This is a reconvened hearing. The previous hearing was adjourned because the hearing did not complete within the scheduled time.

Issues to be Decided

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 their application from the Tenant?

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

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

Background and Evidence

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

The parties testified that this month-to-month tenancy began on May 1, 2019, with a monthly rent of \$7,917.75, due on the first day of the month. The Tenant paid a security deposit of \$3,750.00.

Security Deposit - \$3,750.00

The Landlord filed their application on April 12, 2024.

The Landlord's agents testified the following:

- the Tenant paid a security deposit on May 1, 2019
- the Landlord is retaining the full amount of the security deposit
- the Tenant provided their forwarding address on April 2, 2024
- a move-in condition inspection report was completed with the Tenant and a copy was provided to the Tenant
- a move-out condition inspection report was completed with the Tenant and a copy was provided to the Tenant

Landlord's Application:

Kitchen Faucet - \$315.00

The Tenant agreed to the amount of \$315.00 for the damage to the kitchen faucet.

Carpet Cleaning - \$315.00

The Tenant agreed to the amount of \$315.00 for the carpet cleaning.

Flooring - \$8,226.75

The Landlord's agents testified the following:

- water damage was caused to the flooring due to the Tenant's plants located in the northeast and southeast corner of the living room

The Landlord provided the following as evidence:

- photos of the damaged flooring
- an estimate dated March 19, 2024, in the amount of \$8,226.75 for the cost of the replacement floorboards that were damaged
- a copy of the move-in and move-out condition inspection report

The Tenant testified the following:

- the only flooring that was damaged was near the window
- the rental building was built in 2005 and the flooring has depreciated by 15 years

Paint - \$577.50

The Landlord's agent testified the following:

- the Tenant glued a mirror on the wall without the owner's consent and it caused damage to the wall, which required the wall to be painted

The Landlord provided the following as evidence:

- an invoice dated March 23, 2024, in the amount of \$1,200.00 for the cost to the paint the whole room
- a copy of the move-in and move-out condition inspection report

The Tenant's assistants testified the following:

- the mirror that the Tenant installed in the bathroom was an improvement as there was no mirror in the bathroom
- it was not necessary for the Landlord to remove the mirror at the end of the tenancy
- the Landlord damaged the wall by removing the mirror that the Tenant installed

Tenant's Application:

Bedroom Electrical - \$7,500.00

The Tenant's assistants testified the following:

- the Tenant is seeking one month of rent for the electrical not working in their bedroom from February 2023 to September 2023
- due to the electrical not working in the bedroom, they were unable to close the electrical blinds and the lights in the room did not work
- the Tenant advised the Landlord on February 22, 2023, that the lights and blinds did not work in the second bedroom

The Tenant provided the following as evidence:

- a copy an email from the Tenant to the Landlord dated February 22, 2023, that states the lights in the second bedroom do not work, and the blinds do not close
- a copy of an email from the Landlord to the Tenant dated June 21, 2023, that states the blinds would be replaced around mid-July 2023, and that the cost to repair the lighting in the bedroom is too expensive, so the Landlord is willing to provide the Tenant with two floor lamps

The Landlord's agents testified the following:

- the Landlord offered the Tenant to floor lamps, but they refused to accept them
- the electrical was replaced on September 5, 2023

Analysis

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

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

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

Item	Claimed \$	Granted \$
Kitchen Faucet	315.00	315.00
Carpet Cleaning	315.00	315.00
Flooring	8,226.75	400.00
Paint	577.50	0.00
Total amounts	9,434.25	1,030.00

Kitchen Faucet and Carpet Cleaning - \$315.00

The Tenant agreed to pay the amount of \$315.00 for the kitchen faucet and \$315.00 for the carpet cleaning.

Paint

Residential Tenancy Policy Guideline 16D states that a party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a Landlords is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Residential Tenancy Branch Policy Guideline 40 provides the following:

Damage(s)

When applied to damage(s) caused by a Tenant, the Tenant's guests or the Tenant's pets, the Arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the Arbitrator finds that a Landlord makes repairs to a rental unit due to damage caused by the Tenant, the Arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

Used items

If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use.

Residential Tenancy Branch Policy Guideline 40 (Useful Life of Building Elements) establishes how long a building element under reasonable wear and tear is expected to last.

Item	Useful life in years
Interior Paint	4

In accordance with Residential Tenancy Branch Policy Guideline 40, the useful life of interior paint is four years. The Tenant lived in the unit for approximately five years.

I find the useful life of the interior paint has long since expired. Residential Tenancy Branch Policy Guideline 40 provides that the useful life of interior paint under normal wear and tear is four years, therefore it would be the Landlord's responsibility to paint the unit at the end of the tenancy. The Landlord has failed to prove point two of the four-point test that a loss occurred for the paint.

I also find the Landlord has failed to prove point three of the four-point test. The Landlord provided a copy of an invoice for painting in the amount of \$1,200.00. The invoice does not show that the amount was paid by the Landlord. The Landlord did not provide any evidence that this amount was paid, such as a receipt to confirm payment as required under Residential Tenancy Policy Guideline 16D.

Based on the above and on a balance of probabilities, I find that the Landlord has failed to prove that a loss occurred for the paint, and they failed to establish the value of the loss.

Flooring

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 16D states that 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.

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award compensation in situations where establishing the value of the damage or loss is not straightforward. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

The Landlord has proven that there has been an infraction of a legal right under section 32(3) of the Act, which required the Tenant to repair damage to the rental unit caused by the actions or neglect of the Tenant or a person permitted on the residential property by the Tenant.

The Landlord is seeking compensation for the flooring and wall that was damaged. The Landlord provided a copy of an estimate for the flooring in the amount of \$8,226.75. The estimate does not show that the amount of \$8,226.75 was paid by the Landlord. The Landlord did not provide any evidence that this amount was paid, such as a receipt to confirm payment as required under Residential Tenancy Policy Guideline 16D.

Based on the above, the Landlord's agent testimony, move in- and move-out condition inspection report provided by the Landlord showing that at the end of the tenancy there was damage to the living room flooring, and on a balance of probabilities, I find that the Landlord has proven there was an infraction of a legal right under section 32(3) of the Act but failed to establish the value for the loss they incurred for the flooring and the paint. Therefore, nominal damages are awarded to the Landlord in the amount of \$400.00 for the flooring.

Added to the \$400.00 for the nominal damages awarded for compensation for a loss under the Act under section 67 of the Act, I grant the Landlord \$315.00 for the kitchen faucet and \$315.00 for the carpet cleaning, for a total amount of \$1,030.00.

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

Section 38 of the Act provides the following:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the Tenant's forwarding address in writing,the Landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the Tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[Tenant fails to participate in end of tenancy inspection]*.
- (3) A Landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the Tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.

(4)A Landlord may retain an amount from a security deposit or a pet damage deposit if,
 (a)at the end of a tenancy, the Tenant agrees in writing the Landlord may retain the amount to pay a liability or obligation of the Tenant, or
 (b)after the end of the tenancy, the director orders that the Landlord may retain the amount.

(5)The right of a Landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the Tenant is in relation to damage and the Landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*Landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*Landlord failure to meet end of tenancy condition report requirements*].

(6)If a Landlord does not comply with subsection (1), the Landlord
 (a)may not make a claim against the security deposit or any pet damage deposit, and
 (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7)If a Landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the Tenant agrees otherwise.

(8)For the purposes of subsection (1) (c), the Landlord must repay a deposit
 (a)in the same way as a record may be served under section 88 (c), (d) or (f) [*service of records*],
 (b)by giving the deposit personally to the Tenant, or
 (c)by using any form of electronic
 (i)payment to the Tenant, or
 (ii)transfer of funds to the Tenant

The parties completed a move-in and move-out condition inspection report and a copy of both were provided to the Tenant.

I find the Landlord did not extinguish their right to claim against the security deposit for damages and the Tenant did not extinguish their right to the return of the security deposit under section 38 of the Act.

As I have determined that neither party extinguished their right to the security deposit, I must determine if the Landlord is entitled to retain a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested.

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the Landlord receives the Tenant's forwarding address in writing, whichever is later, a Landlord must repay a security deposit to the Tenant or make an application for

dispute resolution to claim against it. As the forwarding address was provided on April 2, 2024, and the Landlord made their application on April 12, 2024, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

Under section 72 of the Act, I allow the Landlord to retain from the Tenant's security the amount of \$1,130.00, in satisfaction of the monetary award.

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

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

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

To be awarded compensation for a breach of the Act, the Tenant must prove:

Four Point Test

- the Landlord 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 Tenant acted reasonably to minimize that damage or loss

Item	Claimed \$	Granted \$
Bedroom Electrical	7,500.00	200.00
Total amount	7,500.00	200.00

Section 32(1) of the Act provides the following:

A Landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award compensation in situations where establishing the value of the damage or loss is not straightforward. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

The Tenant is seeking compensation for one month of rent in the amount of \$7,500.00 due to the electrical in their bedroom not working for approximately seven months.

The Tenant has proven that there has been an infraction of a legal right under section 32 of the Act which requires a Landlord to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a Tenant. The Tenant did not provide any reasoning as to how they determined the value to be \$7,500.00.

Based on the above, the Tenant's assistants' testimony, and on a balance of probabilities, I find that the Tenant has proven there was an infraction of a legal right under section 32 of the Act but failed to establish the value for the loss of the bedroom electrical. Therefore, nominal damages are awarded to the Tenant in the amount of \$200.00.

Is the Tenant entitled to recover the filing fee for their 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 **\$3,068.96** under the following:

Monetary Issue	Granted Amount
a Monetary Order to the Landlord for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$1,030.00
authorization to retain a portion of the Tenant's security deposit in satisfaction of the Monetary Order requested under section 38 of the Act	\$1,130.00
authorization to recover the filing fee for their application from the Tenant under section 72 of the Act	-\$100.00
a Monetary Order for compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act	\$200.00
authorization to recover the filing fee for their application from the Landlord under section 72 of the Act	\$100.00
a Monetary Order to the Tenant for the return of the balance of their security deposit, plus interest from the Landlord	\$2,768.96
Total Amount	\$3,068.96

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 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: October 11, 2024

Residential Tenancy Branch