Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear linked applications.

The Tenant's August 15, 2024 Application for Dispute Resolution under the Act is for:

- A Monetary Order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- An Order for the Landlord to return the security deposit, pursuant to section 38;
- An authorization to recover the filing fee for this application, under section 72.

The Landlord's October 4, 2024 Application for Dispute Resolution under the Act is for:

- A Monetary Order for the cost of repairs and loss under the Act, the regulation or tenancy agreement pursuant to section 67;
- An authorization to retain all or a portion of the security deposit, under section 38;
- An authorization to recover the filing fee for this application, under section 72

For further clarity, the Tenant has claimed:

1. Double their security and pet damage deposits, in the total sum of $4,175.00 plus any accrued interest;
2. $654.30 for outstanding hydro utility costs;
3. The $100.00 filing fee.

And the Landlord has claimed:

1. $1,475.00 for repairs out of the security deposit;
2. Retention of the $600.00 pet damage deposit for pet damages;
3. The $100.00 filing fee.

Note: with some exceptions, such as special rules for certain claims, the monetary amounts claimed in the Notice of Dispute Resolution Proceeding by each Applicant presents a limit on the maximum award, unless the Arbitrator decides to grant an amendment to the application(s).

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

Based on the information before me, I conclude that the Tenant was served with the Landlord's Proceeding Package and evidence in accordance with the Act.

Based on the information before me, I conclude that the Landlord was served with the Tenant's Proceeding Package and evidence in accordance with the Act.

I also deem that both parties had established service and communication by email throughout the tenancy, as this was a major mode of communication throughout the tenancy and afterwards.

Issues to be Decided

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 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 and/or pet damage deposits in partial satisfaction of the monetary award requested? Or should the full security and pet damage deposits be returned to the Tenant?

Should either party be authorized to recover the filing fee from the Respondent in their respective applications?

Facts and Analysis

I note that, in total, there were hundreds of pages of evidence, including written testimony, photographs, and digital files. I have reviewed all evidence from both parties, but *I will only refer to what I find relevant* in my decision. There appears to be a significant amount of evidence pertaining to allegations of harassment or similar grievances; I emphasize that I will only address the claims in each application, and neither party has claimed for intangible losses such as harassment or loss of quiet enjoyment (the Tenant withdrew their claim for loss of quiet enjoyment as per the RTB-42O form dated October 3, 2024).

Each party submitted copies of tenancy agreements which were largely the same but included different dates regarding the collection of the pet damage deposit.

Based on the tenancy agreements before me, this tenancy started on October 1, 2021, initially for a fixed term but defaulting to month-to-month after one year. At the outset of the tenancy the rent was $2,975.00 due on the first day of each month. A security

deposit in the amount of $1,475.00 was paid on September 5, 2022, and a pet deposit of $600.00 was paid on either September 5, 2022, or October 4, 2021.

Both parties participated in the move-in condition inspection on September 29, 2021, where a condition inspection report was completed in accordance with the Act and regulations.

Utilities were not included in the rent, and the hydro utilities were initially under the Landlord's name; utility costs were recouped from the Tenant, who resided in the upper suite, as well as the other tenant/occupant who resided in a separate lower suite.

In April 2022, the Landlord agreed to allow the Tenant to transfer hydro utilities billing under their own name based on the Tenant's request in an email exchange, following the departure of the other tenant/occupant in the lower suite at the end of the month. In their emails, the Landlord noted that there was the administration of dividing and collecting from the other suite.

The tenancy ended following a notice to end tenancy for cause, which was disputed by the Tenant but ultimately upheld by the Residential Tenancy Branch in a decision dated January 23, 2023. I have noted the relevant file number on the cover page of this decision. On January 24, 2023, the Landlord posted the Order of Possession to the door.

In the days following the posting of the Order of Possession, the parties engaged in several exchanges regarding the move-out condition inspection. The Tenant acknowledges that the Landlord invited the Tenant via email on January 25, 2023, to conduct the move-out condition inspection on January 29, 2023, at 8:00 AM. The Landlord sent the formal RTB-22 Notice of Inspection form on the afternoon of January 27, 2023, to the Tenant via email. The Tenant responded and relied on deeming provisions in relation to the service of the Order of Possession to indicate that this date was too early and that they had more time to vacate.

The Landlord attempted to conduct the move-out condition inspection at their originally proposed time, but the Tenant had not yet vacated and was not in agreement with this date and time for the inspection. The Tenant did not participate in this occasion and left the unit to wait for the Landlord to leave. Later, arrangements were made for the Tenant's friend (alternatively, the Tenant's agent) to attend a second opportunity for a move-out condition inspection on the morning of January 31, 2023. The Tenant's friend/agent attended but did not agree with the Landlord's assessment of the condition of the unit.

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:

- 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

The Tenant has claimed $654.30 in allegedly unpaid utilities from lower suite tenants/occupants spanning from June 1, 2022, to January 31, 2023.

There is no part of the Act that governs rights and obligations with respect to shared utilities. However, *Policy Guideline #1: Landlord & Tenant – Responsibility for Residential Premises*, includes a section titled Shared Utility Service. Here, there is a discussion on circumstances where an Arbitrator may consider the Landlord to be responsible for unpaid shared utility costs.

It indicates that 1) a term in a tenancy agreement which *requires* the Tenant to put utilities in their own name would likely be found unconscionable, and b) if the tenancy agreement *requires* one of the Tenants to have utilities in their name, and if other tenants under a different tenancy agreement don't pay their share, the Tenant may claim against the Landlord for the other tenant(s)' share of unpaid bills.

Having reviewed the tenancy agreement and the parties' emails regarding the utilities, I find that initially, the hydro utilities were being paid by the Landlord. The Landlord never required the Tenant to take responsibility of the utilities for the whole property, in fact, this was the Tenant's proposal. Accordingly, the Landlord cannot be held responsible because there was no breach of the Act, regulation, or tenancy agreement. This is a private matter between the Tenant and the lower suite occupants/tenants.

This claim is dismissed, without leave to reapply.

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

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.

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

- 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 per *Policy Guideline #16 – Compensation for Damage or Loss*, the Arbitrator may award nominal damages in instances where an applicant has failed to meet the full legal test described above if the Arbitrator believes that no significant loss has been proven but there is proof that there has been an infraction of a legal right.

Both parties had a representative at the move-out condition inspection, but the Tenant's agent/friend did not agree with the Landlord's assessment for certain things.

I note that the Landlord's Monetary Order Worksheet estimate ($2,358.57) exceeds the amount claimed in their application ($1,475.00 security deposit plus $600.00 pet damage deposit). There is no application to amend the amount claimed and so the maximum award shall be $2,075.00.

Another point of consideration: assessments by Arbitrators for repairs also consider wear and tear. Calculations for wear and tear are based on *Policy Guideline #40 – Useful Life of Building Elements* which prescribes the life expectancy of building elements commonly found in rental units.

I have reviewed the Landlord's written submissions, including their testimony, condition inspection report, photographs, an excel worksheet with breakdowns, and receipts. The Landlord did not provide much in terms of explaining details pertaining to the damages themselves, however, in one of their written statements they allege that "the tenant's agent acknowledged all damages and stated that there was not enough time to complete the work."

Carpeting salon/den - $747.79

The salon section of the condition inspection report indicates that the flooring was satisfactory at the outset of the tenancy, but during the move-out portion, the Landlord asserts that carpet(s) are missing, and that laminate had "started." The Landlord has asserted that the Tenant changed the flooring in the salon and failed to return it to its original condition/style after the tenancy ended.

The Tenant's agent/friend attending the move-out condition inspection seems to acknowledge this by writing that the Tenant was unable to complete the new floor due to the eviction.

Policy Guideline #1: Landlord & Tenant – Responsibility for Residential Premises, includes a section titled 'Renovations and Changes to Rental Unit' which articulates that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition by the tenant. It further states that, if not returned to the original condition, the landlord may either return it to the original condition themselves and claim the costs, or alternatively claim the amount by which the value of the premises falls short of the value it would otherwise have had.

The Landlord has supplied a photograph of the incomplete laminate flooring, where the room intersects with the next room at the doorway.

To substantiate the value of their loss, the Landlord has provided what appears to be a quote written on the back of a business card of a carpet and flooring company totaling $747.79. There are not enough details for me to understand what kind of work this represents, and I was unable to locate a more detailed quote or receipt detailing the work that was, in fact, completed and paid for.

I conclude that the Landlord has failed to substantiate the value of their loss, however, I do agree that the Landlord's rights were infringed by the Tenant regarding the undisputed notion that the salon floors were changed and not returned to the original style after the tenancy ended. Thus, I have decided to award nominal damages in the sum of $186.95 to the Landlord, which represents 25% of their alleged losses.

Painting - $582.00

The salon section of the condition inspection report indicates that the paint was satisfactory at the outset of the tenancy, but during the move-out portion, the Landlord asserts that paint was required.

Bedroom #3 acknowledges scuffs at the outset of the tenancy, but lists "yellow" in the move-out portion. Entry, halls, and stairs, also acknowledge scuffs.

One segment of the Landlord's written submissions asserts that the salon/den was changed from its original condition – from the original (undisclosed) colour to pink. I was unable to locate any argument from the Tenant or their friend/agent disputing these facts.

The Landlord has submitted the following photographic evidence to substantiate their claims:

- a photo of a blue walled bedroom with three patches of drywall putty;
- two photos of a pink and white walled salon room;
- a bucket of pink paint labelled as salon;
- a photo of a green or blue walled bedroom with extensive drywall patching/putty.

To substantiate the value of their loss, the Landlord has provided a quote describing work related to patching, priming, and painting three walls for $582.00. However, the Landlord has not provided an actual receipt or any proof that this loss was realized. Furthermore, I am unsure of the age of the paint in the two bedrooms for wear and tear considerations.

I conclude that the Landlord has failed to substantiate the value of their loss, however, I do agree that the Landlord's rights were infringed by the Tenant especially with regard to the undisputed notion that the salon walls were painted a different colour and not

returned to the original colour after the tenancy ended. Thus, I have decided to award nominal damages in the sum of $145.50 to the Landlord, which represents 25% of their alleged losses.

Yard estimate - $410.00 / Yard receipt - $426.35

The Landlord has submitted several photos of the yard, arguing that the Tenant did not adequately maintain it. I have reviewed the photos, and I do not observe any unreasonable disregard for the state of the yard contrary to the standards set in *Policy Guideline #1: Landlord & Tenant – Responsibility for Residential Premises.*

This claim is dismissed without leave to reapply.

Carpet cleaning - $32.85

Policy Guideline #1: Landlord & Tenant – Responsibility for Residential Premises includes a section that discusses right and obligations with respect to carpets that may be considered by Arbitrators. Specifically, point #4 in this section indicates that the Tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy if there were uncaged pets in the rental unit. Both parties' written testimony and evidence acknowledges the presence of pets in the rental unit.

The Landlord has provided a receipt of the cleaning supplies for the carpets. I note that the Landlord has not claimed taxes.

In the move-out condition inspection report, the Tenant's agent/friend indicated that the Tenant did not have enough time to clean. I acknowledge that the Order of Possession that ended this tenancy had a tight timeline, however, the Tenant was obligated to clean the carpets by the end of the tenancy. Accordingly, I award the Landlord for costs associated with cleaning the carpets in the sum of $32.85.

Ceiling light - $39.36

The Landlord alleges that they needed to replace a ceiling light in a bedroom, and they have supplied a single photo of the ceiling with a light fixture. It is unclear if this is the broken light or to replaced one. This claim also lacks details on what the Tenant did, as I do not see any evidence of a broken light or any obvious damage.

The Landlord has not met the burden of proof for this claim, and it is dismissed without leave to reapply.

Door repair #1 - $94.10 and Door repair #2 - $10.06

The Landlord has claimed damages to the doors and weather stripping in relation to the presence of pets. The Landlord has submitted several photos of the doorways in

question, some of which appear to show scratches and punctures that could be from claws.

The Landlord has provided two receipts from a hardware store totaling $10.06 and $94.10. I cannot tell what most of the purchases are for based on their name on the receipt, and I was unable to locate further details on them from the Landlord's evidence package. However, one of the listed items is clearly a weather strip, two of which were purchased for $35.94 before tax.

On the balance of probabilities I conclude that the pets caused the damage in the evidence supplied by the Landlord, and thus, I award nominal damages in the sum of $35.94 to the Landlord.

Is the Landlord entitled to retain all or a portion of the Tenant's security and/or pet damage deposits in partial satisfaction of the monetary award requested? Or should the full security and pet damage deposits be returned to the Tenant?

Tenant's claim – double security and pet damage deposit

The Tenant's application requests double of the security and pet damage deposits relating to the assertion that the Landlord did not comply with section 35(4) of the Act, which includes a requirement for the Landlord to give the Tenant a copy of the completed condition inspection report in accordance with the regulations.

Regulation 18(b) indicates that the Landlord must give the Tenant a copy of the signed condition inspection report 15 days after the later of either (i) the date the condition inspection is completed, or (ii) the date the Landlord receives the Tenant's forwarding address in writing. Regulation 18(2) also indicates that the Landlord must use a service method described in section 88 of the Act.

The Tenant provided their forwarding address to the Landlord on January 12, 2024, via email.

The Tenant asserts that they never received a copy of the move-out condition inspection report. The Landlord's written submission argues that the Tenant's agent who attended the move-out condition inspection agreed to photograph the signed report and forward copies to the Tenant.

I was unable to locate any written testimony or evidence from the Tenant's agent/friend who attended the move-out condition inspection to give their first-hand perspective regarding the events of January 31, 2023. There is also no evidence of communication from the Tenant to the Landlord inquiring about any missing move-out condition inspection report following the inspection itself. The Landlord was present and thus their testimony is a primary source, conversely the Tenant was not present, and their testimony is secondary in nature.

On the balance of probabilities, for the reasons described above, I find that the Landlord allowed the Tenant's agent to take photographs of the move-out condition inspection report, and I further conclude that this is equivalent to in-person service in accordance with section 88 of the Act.

Landlord's claim – satisfaction of monetary awards

As per section 72 of the Act, I authorize the Landlord to retain a portion of the Tenant's security and pet damage deposits in full satisfaction of the Landlord's established claims – including the filing fee. I have calculated interest on both the deposits from September 5, 2022, as I have concluded that it was more likely that both deposits were collected at the same time and neither party has submitted any compelling arguments to sway my decision either way.

The remaining amount shall be returned to the Tenant, and I shall grant the Tenant a Monetary Order to give effect to this right.

Should either party be authorized to recover the filing fee from the Respondent in their respective applications?

As the Landlord was successful in their application, I authorize them to recover the filing fee from the Tenant.

The Tenant was not successful in any of their claims, and thus, they cannot recover the filing fee from the Landlord

Conclusion

Monetary Issue	Granted Amount
Security and pet damage deposits, plus accrued interest	$2,089.08
Painting	-$186.95
Flooring/carpet	-$145.50
Carpet cleaning supplies	-$32.85
Weather strips for door(s)	-$35.94
Landlord's filing fee	-$100.00
Total Amount	**$1,587.84**

I grant a Monetary Order to the Tenant in the amount of $1,587.84. 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 Small Claims Court of British

Columbia if equal to or less than $35,000.00. Monetary Orders that are more than $35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: December 10, 2024

Residential Tenancy Branch