

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the Act).

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for damage to the rental unit or common areas
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- a Monetary Order for the return of all or a portion of their security and pet damage deposits
- an Order for the return of the Tenant's personal property
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package and evidence sent by email on November 22, 2024. The Landlord acknowledged being served with the Tenant's hearing package and evidence sent by email on November 29, 2024, and additional evidence by email January 23, 2025.

### **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for unpaid rent?

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 and pet damage deposits in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of all or part of the Tenant's security and pet damage deposits?

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 an Order for the return of their personal property?

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

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

## **Facts and Analysis**

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

This tenancy began on April 1, 2022, with a monthly rent of \$1900.00 due the first day of each month, and with a security deposit of \$950.00. The tenancy ended on October 31, 2024.

Both parties confirmed that the Landlord did not complete any condition inspection report at the start or end of this tenancy. The Tenant provided the Landlord with their forwarding address in writing by email on November 3, 2024.

### **Landlord's Claims**

#### **Unpaid rent: \$75.00**

The Landlord claims \$75.00 for three late rent payment fees from May 2023, June 2023, and May 2024. The Landlord did not attempt to collect late rent payment fees at any time during the tenancy, and did not realize until after the tenancy was ending that they were entitled to do so. The Landlord now seeks to enforce the late rent payment fees.

The Tenant testified that they were unaware of any late rent fees, and that the Landlord never asked them to pay a late rent fee at any time during the tenancy.

#### **Repair and Repaint Walls: \$4116.00**

The Landlord claims that the Tenant damaged the walls of the rental unit by hanging up various shelves, photos, and other items throughout the unit excessively. The Landlord claims the estimated cost of \$4116.00 for the repair of the walls, though they only paid \$2205.00 for the repairs after finding a lower cost option. The Landlord provided photos of the walls taken after the tenancy as evidence to support their claim.

The Tenant denies the Landlord's claim about excessive use of nails or other hangings, and provided photo evidence of the walls taken before this tenancy, which show that the walls were already marked by a number of holes and dings. The Tenant does admit they hung up two shelves, one in the kitchen and one in the bathroom, but argues this is not excessive and is within the regular use of the walls.

Change Faucet: \$300.00

The Landlord claims the Tenant damaged the bathroom faucet during the tenancy, and poured something down the sink at the end of the tenancy. The Landlord did not identify what got poured down the sink and stated there was no damage to the drain, but they had to check which took time. The Landlord replaced the faucet and checked the drain themselves, and charges \$300.00 for their time.

The Tenant testified that the bathroom faucet issue was present at the start of the tenancy. The Tenant denies dumping anything down the bathroom sink, and denies responsibility to pay the Landlord \$300.00 for minor repairs to the property they own which they failed to complete before or during the Tenant's tenancy.

Cleaning: \$200.00

The Landlord claims \$200.00 for their time spent cleaning the rental unit after the Tenant moved out. The Landlord claims the floors, walls, appliances, and walls were unclean. The Landlord claims they spent an entire day cleaning on November 23, 2024.

The Tenant testified that they cleaned the rental unit, including vacuuming, mopping, wiping surfaces, and cleaning the appliances at the end of the tenancy. The Tenant argues the unit was left reasonably clean, and claims the Landlord's photos which are focused on the previously claimed wall damage do not show any of the uncleanness the Landlord claims.

Drip pans: \$75.96

The Landlord claims \$75.96 for a previous rent reduction they agreed to during the tenancy for the Tenant's purchase of drip pans for under the stove elements. The Landlord claims firstly, that the drip pans purchased do not fit the stove, so they are useless and they should not have granted a rent reduction for them. Second, the Landlord claims that the Tenant purchased the drip pans in 2022, but claimed the rent reduction in 2023, and therefore they should not have been entitled to the reduction.

Heater: \$100.00

The Landlord claims an estimated \$100.00 for half the cost of a heater they lent the Tenant during the tenancy, which did not work after the tenancy. The Landlord has not actually replaced the heater, and indicated that the heater they lent the Tenant was very old, which is why they only claim half the estimated replacement cost.

### Lost rental income: \$1900.00

The Landlord claims \$1900.00 for lost rental income for the month of November 2024. This tenancy ended by mutual agreement of the parties on October 31, 2024, after the mutual agreement was signed in July 2024. The Landlord claims they were unable to re-rent the unit because of the wall damage, which they claim the Tenant caused, and which they had to repair. The wall damage was repaired on December 21, 2024. The Landlord did not advertise the unit for rent until December 2024.

### Tenant's Claims

#### Cleaning: \$259.88

The Tenant claims \$259.88 for the cost to clean the rental unit at the start of the tenancy. The Tenant claims the unit was not provided in a reasonably clean condition, so they paid a cleaning company to clean the unit before they moved in. The Tenant never sought to recover this cost from the Landlord during the tenancy, but claims this now as the Landlord is claiming for cleaning after the tenancy.

#### Pest Control: \$210.00

The Tenant claims \$210.00 for the cost of pest control which they arranged and paid for in May 2024. The Tenant's evidence indicates that they saw a rodent in the unit on April 27, 2024, notified the Landlord, then immediately arranged and paid for pest control themselves. The Tenant then sought to deduct this cost from their rent for May 2024. The Tenant did not give the Landlord more than 24 hours to address the problem before they arranged and paid for pest control themselves.

The Landlord did not agree with the Tenant's claim for pest control costs nor allow them to deduct it from the rent. The Landlord's position is that the single rodent in the unit came in with a package of the Tenant's and in any event this was not an infestation which required the involvement of pest control before even just attempting to trap or otherwise deal with the mice themselves first.

#### Return of Personal property

The Tenant seeks an order for the Landlord to remove the shower head and balcony screen doors which the Tenant installed in the rental unit during their tenancy, and return these items to the Tenant. The Tenant did not inform or obtain the consent of the Landlord for these alterations to the rental unit, and made the changes for their own use and comfort while they lived there. The Tenant left these items in the unit at the end of the tenancy of their own volition, but as the Landlord now seeks to claim damages against them they want to recover everything they invested into the rental unit.

### **Is the Landlord entitled to a Monetary Order for unpaid rent?**

Term 14 of the tenancy agreement in this case states that the Tenant **may** be charged an administration fee up to \$25.00 for a late rent payment.

Residential tenancy regulation section 7 says the Landlord **may** charge a non-refundable fee up to \$25.00 for each late rent payment.

Based on the above, I find that the Landlord was entitled to charge the Tenant a late rent of \$25.00 for each late payment of rent in this tenancy, at the time the fee was due, but not as a monetary loss. This fee is based on whether the Landlord enforces the term of the tenancy agreement. As the Landlord MAY charge a fee per the wording of the agreement, they also MAY NOT charge a fee for late rent. If they do not charge a fee for late rent, at the time the rent is due, then they have failed to enforce or rely on this term of the tenancy agreement, and the fee does not apply. This clause is dependent on the action of the Landlord, if the Landlord does not take that action to claim or charge the Tenant a fee, then that fee is not due.

In this case, the Landlord is claiming \$75.00 for late rent payments that were made in 2023, and one in May 2024, of which the Landlord never mentioned any late payment fee or otherwise attempted to charge the Tenant for their late payment of rent.

Per the wording of both the Tenancy Agreement and the Regulation, the Landlord MAY charge a fee for late rent, not the Tenant MUST pay a charge for a late rent fee. I find this to mean that the Landlord, at the time of the late rent payment, may charge the Tenant a \$25.00 late rent fee. If the Landlord fails to enforce that right at the time of the late rent payment, then no fee is due, as it is not a requirement under the agreement or the regulation unless the Landlord enforces it at the time.

As the Landlord failed to provide any evidence of attempts to charge or otherwise enforce a late rent payment fee during this tenancy, the Landlord has failed to prove their claim for \$75.00 for unpaid rent. This is only unpaid rent if the Landlord had ever identified it as a fee due with the rent at the time it was due, and the Landlord did not do so. As the Landlord did not enforce the late rent term of the tenancy agreement, the Tenant also did not act in breach of that term.

For these reasons, the Landlord's claim for \$75.00 for unpaid rent is dismissed, without leave to reapply.

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

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

Section 32 of the Act says 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, except for reasonable wear and tear.

Section 7(2) of the Act says a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

#### Repair and Repaint Walls: \$4116.00

Based on the evidence and testimony before me, and on a balance of probabilities, I find the Landlord has failed to prove their claim for the cost to repair damage to the walls of the rental unit.

As the Landlord failed to complete any condition inspection reports at the start or end of the tenancy, I have no detailed descriptions of any of the walls of the rental unit at the start versus the end of the tenancy. I find that the Landlord failed to provide any evidence of the condition of the walls before this tenancy began and therefore failed to prove that the Tenant is responsible for damaging the walls as they claim, or that any breach of the Tenant's led to the Landlord's loss.

I find the Landlord has failed to prove that the Tenant breached section 32 of the Act by damaging the walls of the rental unit. Therefore, the Landlord's claim for \$2860.00 for wall damage is dismissed, without leave to reapply.

#### Change Faucet: \$300.00

Based on the evidence and testimony before me, and on a balance of probabilities, I find the Landlord has failed to prove their claim for \$300.00 to change the faucet in the bathroom of the rental unit.

First, the Landlord has again failed to prove the Tenant breached section 32 of the Act by damaging the faucet, as there is no evidence of the condition of this faucet before the tenancy began. The Tenant's claim that the faucet was already damaged before this tenancy is just as likely as the Landlord's claim that the Tenant damaged it, and as the Landlord is bears the burden of proof and failed to prove any, their claim fails.

Second, the Landlord has not proven the value of their loss. The Landlord has not explained how or why they should be compensated \$300.00 for an hour or two of their time spent completing a task that is typically required in their capacity as a Landlord, nor provided any evidence of an actual monetary loss. There is no evidence of purchasing a new part for the sink faucet or otherwise paying for repair supplies, nor any evidence of the Landlord's time spent, hourly wage and why its reasonable, or any other documentary evidence. This appears to be a claim for an arbitrarily determined amount, which is not sufficient as a basis for compensation.

For these reasons, the Landlord's claim for \$300.00 for to replace the sink faucet 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 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

Cleaning: \$200.00

Based on the Landlord's evidence and testimony, I find that the Landlord has failed to establish a claim for the cost to clean the rental unit after the Tenant moved out.

Section 37(2) of the Act says the tenant must leave the rental unit reasonably clean at the end of the tenancy.

Based on the photos taken after the tenancy ended provided as evidence by the Landlord, I find that the Tenant left the rental unit reasonably clean. Each photo shows what appear to be clean floors, wiped walls, clean and tidy rooms and surfaces, a clean stove top. There is no evidence in the Landlord's photos of any of the items they claim were dirty, such as all the appliances, and the Landlord's own photo of the stove discredits the testimony they gave that the stove was filthy. The stove appears perfectly clean in the photo.

For these reasons, I find the Landlord has failed to prove that the Tenant breached section 37 of the Act. Therefore, the Landlord's claim for \$200.00 to clean the rental unit is dismissed, without leave to reapply.

Drip pans: \$75.96

Based on the evidence and testimony before me, I find the Landlord has failed to identify or prove that the Tenant breached any section of the Act with regard to the drip pans in the rental unit.

The Tenant requested the Landlord's agreement, in writing, for a rent reduction due to a minor repair required in the unit. The Landlord granted their consent to the rent reduction, and the Tenant deducted the agreed upon amount from the rent.

The Landlord's failure to verify that the purchased stove pans fit the stove, or to provide proper stove pans in the first place, is not a breach of the Act by the Tenant, it is the Landlord's own failure to verify information before the enter an agreement. In addition, this happened over a year before the tenancy ended. In either case, the Landlord bears the responsibility to provide a clean, functional, and working stove, not the Tenant, so the Landlord's loss with regard to stove part is their own to bear as there is no evidence the Tenant damaged the stove or caused the need for new stove pans.

For these reasons, the Landlord's claim for \$75.96 for stove drip pans is dismissed, without leave to reapply.

Heater: \$100.00

Based on the Landlord's evidence and testimony, I find that the Landlord has failed to establish a claim for the cost replace the portable heater.

As the Landlord has not actually purchased a new heater or otherwise incurred any real monetary loss with relation to this claim, the value of the Landlord's loss has neither been established nor proven. The Landlord is not entitled to compensation based on a estimation because there is no way to confirm or control what the Landlord uses the money for once its awarded, and they may be unjustly enriched if they do not use it for the reason that it was awarded.

Therefore, the Landlord's claim for \$100.00 for the replacement space heater is dismissed, without leave to reapply.

Lost rental income: \$1900.00

Tenancy Policy Guideline 3 says that a Landlord may be compensated for lost rental income where a Tenant vacates a rental unit but breaches the Act by damaging the rental unit, and the damage is such that the unit cannot reasonably be re-rented. The Landlord must have taken all reasonable steps to minimize their loss of rental income, which includes repairing the damage as soon as possible, and re-renting the premises as soon as reasonable after the repairs are completed.



Based on the evidence and testimony before me, I find the Landlord's claim for lost rental income fails for three reasons.

First, the Landlord has failed to prove that the Tenant is responsible for the damage to the walls in the rental unit, and therefore has failed to prove that the reason they had to repair the walls was the action or neglect of the Tenant.

Second, the Landlord failed to repair the walls within a reasonable period of the tenancy ending. The Landlord knew the tenancy would end on October 31, 2024, since July 2024, and failed to take any action to arrange for the wall repair and painting at any time during this period. The Landlord should have been aware of what repairs were needed before the unit was re-rented, and should have made these arrangements so it would be completed as soon as possible after the tenancy ended. Instead, I find the Landlord waited til after the tenancy ended, and again until December 2024, to even complete this repair, which I do not find a reasonable step to minimize their loss.

Lastly, the Landlord failed to even attempt to advertise and re-rent the unit until December 2024, after the period in which they claim lost rental income. The Landlord could have advertised this unit for rent starting in July 2024, once the mutual agreement to end tenancy was signed and they knew the Tenant would move out. It is not reasonable for the Landlord to claim lost rental income for November 2024 when they did not even try to rent it for that month. The Landlord's loss resulted from their own neglect and failure to plan accordingly for the end of this tenancy.

Therefore, the Landlord's claim for lost rental income of \$1900.00 under section 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 Order requested? If not, is the Tenant entitled to the return of all or part of the Tenant's security deposit being held without cause?**

Section 38 of the Act states that within 15 days of the date that the tenancy ends, or the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must make an application for dispute resolution to claim against the tenant's security deposit.

As the Tenant provided their forwarding address by email on November 3, 2024, and this was deemed received per section 44 of the regulation on November 6, 2024, and the Landlord made their application on November 21, 2024, I find the Landlord made their application to claim against the Tenant's deposit on time.

Although the Landlord failed to complete a move out condition inspection with the Tenant at the end of their tenancy, I find that doubling of the deposit in this case does not apply, because the Landlord made claims about issues other than damage to the rental unit, including about unpaid rent, lost rental income, and cleaning. Extinguishment

only applies to claims about damage to the rental unit, not about other claims for other liabilities such as unpaid rent or monetary losses that are not related to damage.

As the Landlord's monetary claims in this case have all failed, I find that the Tenant is entitled to the return of the full amount of their security deposit, plus interest, under section 38 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?**

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the tenant must prove on a balance of probabilities that:

- 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

Cleaning: \$259.88

Based on the evidence and testimony before me, I find the Tenant has failed to prove their claim for cleaning of the rental unit under section 67 of the Act.

There is no requirement under the Act, Regulation, or Tenancy Agreement which requires the Landlord to provide the rental unit to the Tenant in a reasonably or perfectly clean condition.

The only requirement under the Act with regard to cleanliness of a rental unit are sections 32 and 37, which both require the Tenant to maintain a clean and sanitary unit, and to provide the rental unit in a reasonably clean condition at the end of the tenancy.

A Tenant's requirement to comply with section 37 of the Act is not impacted by the condition of cleanliness of the unit before the tenancy starts. In any event, the Landlord's claim for cleaning has failed in this case, as I found the Tenant did comply with section 37 of the Act.

As the Tenant has not proven that the Landlord breached any section of the Act with regard to this claim, the Tenant's claim for cleaning at the start of the tenancy is dismissed, without leave to reapply.

### Pest Control: \$210.00

Section 33 of the Act allows a Tenant to make arrangements and pay for emergency repairs which are urgent, necessary for the health or safety of occupants, and related to a major issue which must be resolved on an emergency basis. There are specific repairs listed in this section, of which pest control is not one.

Emergency repairs are the only claims or basis upon which a Tenant can make the repair themselves, then claim the cost as a rent reduction from the Landlord, and only if the Landlord fails to respond after two attempts to contact them about the emergency repairs needed.

A Tenant is not entitled to make a typical repair or hire pest control without giving the Landlord notice and a reasonable amount of time to respond, then claim compensation for the costs incurred as a rent reduction or otherwise.

I agree that the Landlord was responsible to address the Tenant's concerns about the rodent in the rental unit. However, the Tenant did not give the Landlord time to respond to their request, nor to address it with other reasonable and lower cost measures, before they hired pest control themselves. Even if the Landlord had failed to address this problem in a reasonable period, which I find to be about 1 week from the Tenant's report, the Tenant's recourse was to apply for an Order for repairs, not to pay for and complete the repairs themselves.

I find that the Landlord did not breach section 32 of the Act, as the Tenant already addressed the matter themselves at their own cost before the Landlord had a reasonable opportunity to do so. I find that it would have been reasonable for the parties to attempt to address the rodent on their own before incurring the cost of pest control services, as there is no evidence of a rampant or persistent rodent infestation. Ultimately, I find the Tenant chose to hire pest control of their own volition, before any breach of the Act by the Landlord had occurred, and are therefore responsible to bear their own loss in this case.

For these reasons, the Tenant's claim for \$210.00 for pest control is dismissed, without leave to reapply.

### **Is the Tenant entitled to an Order for the return of their personal property?**

Part 5 of the Regulation deals with the abandonment of personal property at the rental unit, and how it must be stored or returned to the Tenant if claimed.

Based on a review of the Regulation, I find that the Tenant's claim does not satisfy the definition of personal property as contemplated by the Regulation.

Personal property would be the belongings or items of the Tenant which they abandoned or forgot at the rental unit. It does not refer to alterations to a rental unit

such as a shower head or screen doors, which would require work and costs to reverse, especially when these alterations were made without the knowledge or consent of the Landlord.

I do not find it reasonable to grant the Tenant an Order for the return of items they used to alter the rental unit for their own enjoyment, and which they knowingly and purposely left behind at the rental unit, to the detriment of the Landlord (including their time and costs for reversing the unsanctioned alterations).

The Tenant's claim fails on the basis that it is not the intended purpose of the regulation to reverse alterations to a rental unit which the Tenant made and left behind of their own volition.

Therefore, the Tenant's claim for the return of the shower head and screen doors which they installed and left behind in the rental unit is dismissed, without leave to reapply.

**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?**

As neither party was successful in their application, and both parties paid \$100.00 for their filing fees for their application, I find that neither party is entitled to recover this cost from the other under section 72 of the Act.

## **Conclusion**

I find the Tenant is entitled to a Monetary Order of **\$996.10** for the return of the full balance of their security deposit, plus interest, under sections 38 and 67 of the Act.

The Tenant must serve this Order to the Landlord as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial 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: February 21, 2025

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Residential Tenancy Branch