

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

And the Landlord's cross-application under 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

Preliminary Matters

The parties were informed of their responsibility to exchange evidence. As neither party objected to the evidence presented by the other in the hearing, I find each party acknowledged receipt of evidence from the other party and is duly served in accordance with the Act.

Under section 64(3)(c) of the Act, I amend the Tenant's application to correctly reflect the legal name of the Landlord as indicated on the tenancy agreement.

Issues to be Decided

Is the Landlord entitled to a monetary order for damage to the rental unit under sections 32 and 67 of the Act?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

Is either party entitled to recover their filing fee for this application?

Facts and Analysis

Based on the evidence and submissions from both parties I find as follows:

- The Tenancy began on August 1, 2023, with a monthly rent of \$1,860.00 due on the first day of each month.
- The Tenant provided a security deposit of \$900.00 on July 14, 2023, and a pet deposit of \$500.00 on January 16, 2024.
- The Landlord completed a move in inspection with the Tenant's mother on August 1, 2023. The Tenant says they were not aware of this inspection until the end of the tenancy.
- The tenancy ended on April 30, 2025, and the Tenant vacated the rental unit on that date.
- The Landlord attempted to inspect the unit with the Tenant on April 29, 2025, at 3:00pm based on a text message from the Tenant on April 28, 2025, saying 3:00pm works. The Tenant says they were agreeing to a time for the painters to attend the unit. The Landlord says the text conversation was clearly to arrange the inspection.
- The parties spoke in person on April 29, 2025, and the Landlord says they informed the Tenant that the inspection would take place on the following day, April 30, 2025. The Landlord sent two text messages informing the Tenant they would arrive at 2:00pm on April 30, 2025. The Tenant did not reply.
- The Landlord attended to inspect the rental unit at 2:00pm on April 30, 2025. However, the Tenant had already vacated the unit, leaving the keys on the counter. The Tenant had sent a message at 9:44am that morning indicating their intention to leave the key on the counter. The Landlord did not object to this information at the time.
- The Landlord completed the move out inspection without the Tenant on April 30, 2025.
- The Landlord received the Tenant's forwarding address by text message on May 4, 2025.
- The Landlord emailed a copy of the inspection report to the Tenant on May 8, 2025, with a breakdown of the costs withheld from the deposits and photographs of the unit.
- The Landlord returned \$414.00 of the deposits plus the interest accrued on the deposits to the Tenant on May 11, 2025. I accept the Landlord's calculations of the interest amounts.
- The Tenant applied for the return of their deposit on May 26, 2025.

- The Landlord applied to retain the security deposit on May 30, 2025.
- The Landlord holds \$986.00 in trust for their claims of cleaning, replacing blinds, and their estimate of materials to repair a cabinet, pending the outcome of this hearing.
- The Tenant has requested return of double their deposits pursuant to section 38(6) of the Act.

Is the Landlord entitled to a monetary order for damage to the rental unit under sections 32 and 67 of the Act?

Under Policy Guideline 16 regarding compensation for damage or loss, to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement.
- loss or damage has resulted from this non-compliance.
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 32 of the Act, the Tenant is responsible for any damage to the rental unit caused by their own actions or neglect. Under section 37 of the Act, the Tenant must leave the rental unit reasonably clean at the end of the tenancy.

Section 21 of the regulations says:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Landlord has presented sufficient evidence to show damages to the rental unit and to show that the rental unit was not reasonably clean at the end of the tenancy. I find the Tenant breached sections 32 and 37 of the Act and the Landlord has suffered a loss as a result.

The Landlord submitted receipts and invoices. I find the Landlord acted reasonably to minimize their losses and the costs claimed are proportionate to the damages shown in their evidence.

The Tenant has not provided any evidence of the condition of the unit in support of their testimony to refute these claims.

Cleaning

I accept the Landlord's evidence and testimony, including photographs, and an email from the new occupant, and invoices indicating the cost of cleaning. I find the unit was not reasonably clean. I grant the Landlord compensation of **\$326.38** for cleaning.

Blinds

Under Policy Guideline 40, window coverings are estimated to have an approximate lifespan of 15 years. In this case the blinds were likely 9 years old. Sometimes an award for the full cost of a repair or replacement may be ordered, even if the damaged property was not new. This may be the case in claims where no obvious improvement in the value of the property has occurred as a result of the replacement, or the damage was a result of the Tenant's negligence.

The photographs indicate the blinds are frayed and stained black along the edge. I find the apparent mold damage is consistent with a failure to properly clean or ventilate the unit and is beyond wear and tear.

I find it was reasonable for the Landlord to replace the blinds since they were unable to remove the staining. Therefore, I grant the Landlord compensation of **\$446.25** to replace the blinds.

Cabinet

The Landlord believes the damage to the cabinet was caused by the Tenant's chin up bar. The Tenant denies installing the bar. Regardless of the cause of the damage, I accept that the damage was not noted on the move in inspection report or at any time during the tenancy.

On a balance of probabilities, I find the damage was most likely caused by the Tenant. I find the damage is beyond wear and tear. Therefore, I grant the Landlord **\$220.00** compensation for the estimated cost of the materials for the repair.

In summary, I grant a monetary award to the Landlord for compensation under sections 32, 37 and 67 of the Act in the amount of **\$992.63**.

Is the Landlord entitled to retain the security deposit?

According to Policy Guideline 17, page 5, allowing landlords to collect security deposits provides landlords with some recourse if a tenant damages the rental property. Since a security deposit can equal up to ½ of the monthly rent payable, the deposit amount is often significant for tenants who, if moving into a new rental unit, must pay deposits to a new landlord. Because of this, the RTA requires landlords either to return the deposit, reach written agreement with the tenant to retain all or part of the deposit, or apply for dispute resolution in a timely manner. Under the RTA, there are consequences for

landlords if they do not do one of these things to deter landlords from unjustifiably not returning a deposit. These provisions are also intended to reduce the number of disputes the Residential Tenancy Branch receives since fewer tenants need to apply for dispute resolution to seek the return of their deposit and landlords are discouraged from applying for dispute resolution to seek to retain a deposit when there is no merit to their dispute (see: Nazari v. Kask-Ryan, 2016 BCSC 943).

On page 3 of Policy Guideline 17, at point 8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

Under section 38(6) of the Act, if the landlord does not return the full deposit or file for dispute resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, the value of the deposit is doubled.

In this case, there are issues with the procedure used for the move in and move out inspections. However, I find it is not necessary to examine which party breached their obligations first because I find the Landlord did not apply to retain the Tenant's deposit within 15 days of receiving their forwarding address.

I find the value of the security and pet deposit must be doubled. The Landlord's claim will be set off from double the value of the deposit.

Therefore, the following calculation applies. The Tenant paid a total of \$1,400.00 in deposits. Double the value of the deposits is equal to \$2,800.00. The Landlord has already returned \$414.00 and has a valid claim for \$992.63. Therefore, the Landlord must return **\$1,393.37** to the Tenant ($\$2,800.00 - \$414.00 - \$992.63 = \$1,393.37$).

I find the Landlord has already returned sufficient interest on the deposits to the Tenant.

Is the Tenant entitled to the return of their deposit under section 38 of the Act?

Based on the above calculation, I grant the Tenant a monetary award under section 38.1 of the Act, in the amount of **\$1,393.37**.

Is either party entitled to their filing fee?

Under section 72 of the Act, as both parties were partially successful with their applications, each party will bear the cost of their own filing fee.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$1,393.37**. The Tenant is provided with this Order on 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Each party will bear the cost of their own filing fee under section 72 of the Act.

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 31, 2025

Residential Tenancy Branch