Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenants: **MNDCT, DRI, OLC, FFT**
Landlord: **MNDL-S, FFL**

Introduction

This hearing dealt with the Tenants' Application under the *Residential Tenancy Act* (Act) for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act;
2. An Order to dispute a rent increase that is above the amount allowed by law under section 43 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement under section 62(3) of the Act; and,
4. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Landlord's cross Application under the Act for:

1. A Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38 and 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Tenant J.S., Tenant A.S. attended the hearing for the Tenants.

Landlord A.N. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants testified that they applied for authorization to serve the Proceeding Package on the Landlord by email substituted service. Authorization was granted on August 24, 2023. I find that the Landlord was deemed served on August 27, 2023, by email in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation* (Regulation). The Landlord confirmed receipt.

The Landlord stated he sent the Proceeding Package by registered mail, although he could not provide the Canada Post customer receipt or tracking number to confirm this service. The Landlord said he also served the Proceeding Package by email, and personally by a server. The Landlord did not provide a screen shot of the email with the attachments demonstrating that he served the Proceeding Package by email, there also was no evidence to show that the Landlord used a process server.

The Tenants testified that they received the Landlord's Proceeding Package in the mail on October 13, 2023. I find that the Tenants were sufficiently served on October 13, 2023 in accordance with section 71(2) of the Act.

Service of Evidence

At the end of the first hearing, both parties were instructed to re-serve their evidence on the other side. The parties were ordered to compile their evidence in an organized, clear, and legible fashion. The parties were instructed to not add any new evidence. The parties were instructed to number the pages of their evidence documents, and send them by registered mail to the other side.

The Tenants testified that they sent their evidence to the Landlord by Fedex Canada on February 5, 2024. The Tenants uploaded their Fedex receipt with tracking number to confirm this service. The Landlord confirmed its receipt. I find the Tenants served their evidence to the Landlord in accordance with my instructions, and the evidence was sufficiently served on February 10, 2024 under section 71(2) of the Act.

The Landlord testified that he sent his evidence package to the Tenants by Canada Post registered mail on February 7, 2024. He said he followed the tracking of the package, and he determined that the Tenants provided an incorrect unit number. The package was resent by Canada Post, and it was confirmed delivered to the recipient on February 17, 2024.

The Tenants said they were away for the family day long weekend, and they confirmed they received a notice on February 17, 2024 that the package was available for pick-up. They had not picked up the package before the February 20, 2024's hearing.

In the hearing on July 26, 2023, the Tenants often referred to the Landlord's submitted evidence. The Tenants used the Landlord's evidence to question witness S.F. I find that the Tenants were sufficiently serviced with the Landlord's evidence under section 71(2) of the Act.

The Landlord uploaded 17 video evidence files. The Landlord did not include a Digital Evidence Details form #RTB-43 which confirms that the opposing party can view their digital files, and a description of each digital evidence file with key time points noted for each digital file that support the Landlord's submissions.

Residential Tenancy Branch (RTB) Rules of Procedure 3.10.1 states:

> ***3.10.1 Description and labelling of digital evidence:*** *To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent [party].*
>
> *A party submitting digital evidence must:*
>
> - *include with the digital evidence:*
>
> - *a description of the evidence;*
> - *identification of photographs, such as a logical number system and description;*
> - *a description of the contents of each digital file;*
> - *a time code for the key point in each audio or video recording; and*
> - *a statement as to the significance of each digital file;*
>
> - *submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and*
> - *serve the digital evidence on each respondent in accordance with 3.10.4.*

…

3.10.4 Digital evidence served to other parties: *Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form #RTB-43).*

… (Emphasis added)

The Landlord did not provide the key time points in the videos that he uploaded into his evidence. This is a requirement for digital evidence. The videos are named “Tenant Temper Tantrum example” or other similar names that suggest the video just deals with illustrating the Tenants handling of situations. I decline to view these pieces of digital evidence because of the lack of clarity of what they intend to show about the Landlord’s repair claims and specifically the lack of direction to relevant timepoints that are key to support the Landlord’s submissions.

Issues to be Decided

Tenants:

1. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Tenants entitled to an Order to dispute a rent increase that is above the amount allowed by law?
3. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Are the Tenants entitled to recovery of the application filing fee?

Landlord:

1. Is the Landlord entitled to a Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This Decision should be read in conjunction with the Interim Decisions dated November 27, 2023, February 20, 2024, and May 2, 2024.

The parties do not have a signed Address for Service form #RTB-51 that would allow them to properly serve each other with documents by email. Residential Tenancy Policy Guideline #12 applies for the service timelines by email.

The parties confirmed that this tenancy began as a fixed term tenancy on November 15, 2021. The fixed term ended on November 30, 2022, then the tenancy continued on a month-to-month basis. Monthly rent is $2,994.25 payable on the first day of each month. A security deposit of $1,475.00 and a pet damage deposit of $1,475.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord said the tenancy end date was September 30, 2023, while the Tenants said the tenancy end date was September 29, 2023.

The Landlord testified that the Tenants provided their forwarding address, a mailbox number, not their home, to him at the move-out condition inspection held on September 29, 2023. The Tenants stated that they provided a letter dated August 21, 2023 with their forwarding address. The Tenants stated they also sent this letter by email to the Landlord on this same date.

The Landlord applied to retain the Tenants' deposits on October 9, 2023.

The parties agreed that:

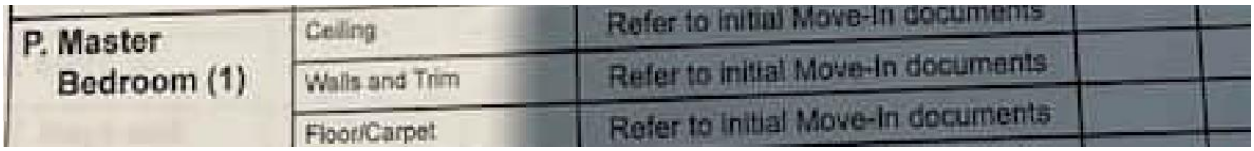
- The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy; and,
- The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of their deposits.

The Landlord said the rental unit was rented through an agency. The Landlord uploaded a letter from his rental and real estate advisor who wrote that "*I know we did complete an inspection report at the time, however, our admin assistant is unable to locate this document from back in 2021. Regardless, this property was handed over as a brand-new unit without any damages etc.*" The professional provided a link to a YouTube video that the Landlord says shows that the rental unit was new, and it had no damages. This professional did not attend the hearing so that his statement could be cross-examined by the Tenants. The document was not certified as true by a notary or lawyer.

The Landlord's witness S.F. testified that the rental unit was a brand-new condominium at the start of the Tenants' tenancy. S.F. was retained to find renters for the Landlord's units, but the Landlord had other people also working to find tenants for his units.

The Tenants testified that on November 15, 2021, they did not do a move-in condition inspection with the Landlord. They said they only took photographs during a walk through of the rental unit. The Tenants stated that they never received a copy of the move-in condition inspection report from the Landlord after they did the walk through.

On August 1, 2023, the Tenants requested a copy of the initial move-in condition inspection report. In a reply from the Landlord on August 3, 2023, it appears there is an attachment to his email which may have been the version of the move-in condition inspection report that the Tenants uploaded in their evidence. On that report, it lists all the rooms, and the notations are the same, they say, "Comment: Refer to initial Move-In documents". There is no condition code in the column to the right of the comments. For example, see condition report A below:



P. Master Bedroom (1)	Ceiling	Refer to initial Move-In documents
	Walls and Trim	Refer to initial Move-In documents
	Floor/Carpet	Refer to initial Move-In documents

Condition report A

This report is unsigned by the Tenants and the Landlord. On September 18, 2023, the Landlord told the Tenants, "*You should have such document and if you have lost it, is not my responsibility to provide you a copy again , but such document will be presented at RTB hearing or in the court as one of my many documents to prove my points.*"

The Landlord uploaded a copy of a condition inspection form #RTB-27 that reports the move-in inspection date was November 15, 2021, and the move-out inspection date was September 29, 2023. In all the rooms, the notations are the same (although different from condition report A), and they say, "Comment: new home, refer to Doc.s & Video, Code: G". For example, see condition report B below:

P. Master Bedroom (1)	Ceiling	new home, refer to Doc.s & Video	G		G
	Walls and Trim	new home, refer to Doc.s & Video	G	touched up stains with paint [illegible]	ST
	Floor/Carpet	new home, refer to Doc.s & Video	G		G

Condition report B

On September 29, 2023, the parties went through the rental unit together, and the Landlord said he presented the report to the Tenants, but they refused to sign it. The

Landlord stated within the next week after the move-out condition inspection time he sent the report to the Tenants by email.

At the move-out condition inspection, the Tenants submitted that the Landlord asked them to sign for the information that was put in the form for the move-in conditions. I note, the Tenants uploaded a video they took during the move-out condition inspection. In that video, when the Landlord gives them the condition inspection report for their signatures, the Tenants want to review it, and find untrue information reported on the form. The form presented in the video is condition report A, but in that report, the Landlord has filled in the column codes next to the comments for the move-in condition inspection. The Tenants wrote in section X. Start of Tenancy that the form was "*Pre-Fill ..*", and below the Tenants wrote, "*We do not agree – Application is prefilled by landlord*".

The Tenants did not see the move-out condition inspection report until the Landlord was almost done filling it out. They said the move-in part was all filled in and it was pre-filled in that the Tenants said they agreed that the report fairly represents the condition of the rental unit at the start of the tenancy. The Tenants emphatically said they did not agree that the report fairly represented the condition of the rental unit at the start of the tenancy.

On page 6 of 7 of the condition inspection report, the Landlord wrote in the box where the Tenants were supposed to sign at move-in and move-out, "*Tenants refused to sign [Landlord's initials] 29-Sep-2023*". The Landlord did not attend the walk through the Tenants did at the start of the tenancy. The Tenants' forwarding address is noted on the condition inspection report.

The Tenants testified that none of the reported damage was caused by their pet.

The Tenants said the rental unit was sold on September 4, 2023.

Tenants' application submissions:

The Tenants said in their original application they were seeking repairs to a washing machine in their rental unit. As the Tenants have vacated the rental unit, and the tenancy has ended, they said this claim is no longer relevant.

The Tenants are disputing an alleged illegal rent increase. At the start of their tenancy, the Tenants' rent was $2,950.00. In November 2022, the Tenant J.S. received a text message from the Landlord that stated:

Tue, Nov 29, 5:44 PM

…

Please note that your monthly rent has been increased %1.5 to $2,994.25/month

The increase was to take effect on December 1, 2022.

The Tenants never received a formal notice, specifically form #RTB-7, from the Landlord for a rent increase notice. Also, the text was sent in November, then the rent increase was to begin in December. The Tenants paid the increased amount starting in December 2022.

The Landlord issued a formal notice of rent increase on July 31, 2023 to the Tenants. This notice stated that the last rent increase came into effect on October 1, 2022. This new rent increase was to be implemented on October 1, 2023.

The Landlord listed his property for sale, and the Tenants said, starting in August 2023, the Landlord never gave them proper notice for viewings of the property. For example:

- on August 21, 2023, the Landlord sent an email telling the Tenants that his realtor would be conducting a private viewing of the rental unit on August 23 at 5:00 PM;
- on August 22 at 1:37 AM, the Landlord corrected the viewing time to 2:30 PM on August 23;
- on August 22 at 2:34 PM, the Tenants emailed the Landlord that they could no longer accommodate the viewing time, and they needed the space for privacy reasons;
- on August 22 at 2:52 PM, the Landlord told the Tenants that they were “not in any legal position to reject my Notice of Entry according to RTA guidelines because I have given you the Notice well more than 24 hours in advance.”

A stream of agitating emails ensued between the parties. The Landlord continued to send emailed notices that his real estate person would be showing prospective buyers through the rental unit, but only giving the Tenants 24 hours or less from when he sent the email to the time when the people would be arriving. The Tenants felt these notices were breaching their right to quiet enjoyment of the home.

The Tenants had purchased their own home, and they mostly were living in their new home by the end of August 2023, but they still had clothing items, computers and other electronics in the rental unit at the beginning of September. The Tenants had paid their mortgage payment and the rent during the month of September 2023. The Tenants gave evidence that the Landlord's real estate person entered their rental unit without their permission on the September 4 long weekend.

The Tenants testified that pictures were taken by the real estate person in the Tenants' rental unit on September 4, 2023, without their consent. The Tenants were away for the long weekend. There was a garbage bag on the floor in the kitchen, and someone had taken its contents out and spread it on the floor. Tenant A.S. said fish items were taken out of their fridge, put in the garbage and left on the floor. The Tenants said the rental unit sold on September 6, 2023.

The Tenants seek an order from the director for the Landlord to comply with the Act, Regulation, and tenancy agreement. The parties' interactions with each other are very unhealthy. Both parties engage in combative conversations via email. They both uploaded their examples of these kinds of conversations. They are endless.

Landlord's application submissions:

The Landlord sold the condominium to buyers on September 4, 2023. The new buyer testified they took possession of the home on October 19, 2023, and they moved in on October 20, 2023. The Landlord claims the following compensation from the Tenants:

Item	Amount
Washing machine repair	$712.48
Repair handicap button	$350.99
New laminate flooring	$5,301.83
Repaint walls	$2,136.75
Balcony cleaning and stain removal	$200.00
Repair 2nd bathroom drain stopper	$100.00
Repair wall oven	$800.00

Washing machine repair:

The Landlord said the washer was damaged by negligent use of the Tenants. The Landlord uploaded an invoice created by the Landlord that seeks $312.48 for the washing machine repair cost, and $400.00 for his time traveling to and from the rental

unit, assisting the technician lifting, removing, replacing the machine, and helping with cleaning around the machine.

The Landlord wrote that the washing machine was damaged because the Tenants loaded a fluffy area rug made of synthetic easily separable fabric. The washing repair receipt does not describe this as the problem. The appliance repair bill states that the diagnosis and repair required was because the issue was "*does not start*", and the description for the work done says, "*cleaned up and tested done*". The appliance repair bill also stated that they cleaned the drain system. Further details were they, "clean drain pump, drain lines, and flush with custom cleaning solution". The total cost for repair was $129.00 + $150.00, plus both taxes totaling $33.48, for a total bill of $312.48.

When the Tenants applied for dispute resolution, the Tenants were seeking the repair of the washing machine. Now that they have vacated, the Tenants said this claim is no longer relevant.

Repair handicap button:

The Landlord seeks $350.99 from the Tenants for a chargeback from the strata council of the residential property. In April 2023, a video caught coverage of Tenant J.S. using his foot to press a handicap button to open a door in the building. The button broke off, and both Tenants, in the video, walked away.

The Landlord said the Tenants damaged the handicap button for 'fun'. While Tenant A.S. said "*my husband was being goofy trying to cheer me up going into the emergency for the 3rd time that month. This button was already damaged for days on its last leg*." Tenant J.S. said, because it had been previously damaged or broken, that they would partially accept responsibility for the damaged button, and Tenant A.S. said "*… we have already taken responsibility and said we would pay for the cost of repair. Where is the invoice?*" By mid-August, the Landlord was still asking the strata for a copy of the invoice.

The Tenants agree to accept this charge to them.

New laminate flooring:

The Landlord submits that the Tenants damaged the laminate flooring in the rental unit due to their negligence. The Landlord uploaded photos that he submits shows that the laminate flooring was damaged. The Landlord said because he cannot find laminate flooring that matches the existing floors, he claims he must replace all the flooring.

The Landlord retained a company to do a property inspection report. The report noted that water damage is observed, but no moisture is noted in the area.

The Landlord said the quotation he received to redo the laminate floors was $5,301.83. The Tenants said they did not see a quotation for this work. The Landlord did not point to the particular evidence showing this quote. I canvassed the Landlord's evidence and did not find a laminate floor quotation.

The Tenants stated that while they were living in the rental unit, they disclosed to the Landlord problems with the flooring. The Tenants said this appeared to be warranty work. The Landlord did not organize investigations into new home warranty repairs or replacements.

Repaint walls:

The buyer of the rental unit, witness T.W., gave testimony about the state of some of the features in the home. The Landlord said that the Tenants repaired holes in the walls, but when they repainted the walls, T.W. said they used paint with the incorrect finish. T.W. said it was obvious where the Tenants had painted and where they had not painted.

The Landlord has uploaded picture evidence of the unsatisfactory painting work in the rental unit. The Landlord has also uploaded his own receipt, and receipt proof for a painter's fee, and supplies purchased for the painting repair work completed. The Landlord seeks $1,420.00 for the painter's fee, $140.49 for paint material. Individual receipts were provided for both claimed amounts. The Landlord seeks $650.00 for his own time spent organizing, buying material, and supervisory work.

The Tenants uploaded a property maintenance invoice for which priming and painting work was completed on September 25, 2023.

Balcony cleaning and stain removal:

The Landlord said the Tenants left the balcony stained and dirty. The Landlord stated that the Tenants told him it was the strata's responsibility to clean the balcony. The Landlord checked with the strata council, and he was told that it is the resident's responsibility to clean their balcony.

The Landlord seeks $200.00 to cover the cleaning costs of the balcony.

The Tenants provided no evidence that they were opposed to this cleaning.

Repair 2nd bathroom drain stopper:

The Landlord claims $100.00 to repair the second bathroom's drain stopper.

The Tenants said the bathroom faucet was supposed to be repaired by the Landlord's technician when they did a walk through. The technician took parts out of the bathroom sink, but the person never returned. This happened while the Tenants were living in the rental unit. The Landlord was looking for warranty coverage for the laminate floors and this bathroom sink item. In the end, no one returned to put it back together.

Repair wall oven:

The Landlord said the wall oven was damaged because of the Tenants mishandling. The Landlord's monetary order worksheet reports that the cost to repair the wall oven is $800.00.

The Landlord uploaded an invoice dated November 25, 2023 from an appliance repair company. The repairs conducted were to the oven control board installation, and a bake element. The total for the invoice is $434.18.

The Landlord uploaded another invoice dated September 13, 2023 stating a diagnosis and repair was completed on an electric oven. The explanation of the issue was 'no heat', and the description of the work done is 'Check the unit and searching for part.' The total for the invoice for oven repair is $59.00 plus both taxes.

Neither of the invoices submitted by the Landlord total $800.00, or near that amount. Also, neither of the invoices state that the damage to the oven was caused by negligent use.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As I told the parties at the end of our last hearing, I very well may go over the 30-day time limit to make my decision. For clarity, a director's decision does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period specified under section 77(1)(d).

I do offer my apologies for the short lateness of this decision. I did expect it to happen.

Are the Tenants entitled to an order regarding the Tenants' dispute of a rent increase by the Landlord?

Part 3, section 41 of the Act, states that a landlord must not increase rent except in accordance with sections 42 and 43 of the Act. These sections only allow for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the tenants under section 14 of the Act.

The Tenants said they received a text message from the Landlord on November 29, 2022, saying that their rent, starting December 1, 2022, was to be $2,994.25.

Section 42(2) states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. The Landlord's notice was two days before the rent increase was to start. I find the Landlord's notice about the Tenants' rent increase is not in line with section 42(2) of the Act.

Section 42(3) of the Act states that a notice of a rent increase must be in the approved form. I find that a text message to the Tenants is not in the approved form.

If the Landlord wanted to impose a rent increase beginning on December 1, 2022, then the Landlord needed to serve the rent increase approved form before the end of August 2022. This would have given the Tenants the correct notice period, and served on the approved form. I find that the Landlord's rent increase notice was not in compliance with the Act, therefore, is not allowed.

The Tenants' rent was $2,950.00 per month before the increase, and $2,994.25 after the increase. The Tenants paid a $44.25 monthly increase from December 1, 2022, to the September 30, 2023. Based on the testimonies, and evidence of the parties, I find the Landlord owes the Tenants **$442.50** compensation for the improper rent increase imposed on the Tenants and I grant this compensation to the Tenants under section 67 of the Act.

Settled matter

The Landlord seeks $350.99 from the Tenants for a chargeback from the strata council of the building for an incident when Tenant J.S. kicked a handicap button in the residential property, and it broke and fell off. The Tenants have accepted responsibility for this chargeback.

I find the parties have settled this part of the Landlord's claim for compensation. I grant the Landlord the full amount of this strata chargeback totaling **$350.99** under section 63 and 67 of the Act.

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

Section 38 of the Act sets out the obligations of a landlord in relation to a security and pet damage deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

Further, under sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Regulation.

The Landlord testified that a move-in condition inspection was completed with the Tenants. The Tenants said they never participated in a move-in condition inspection with the Landlord or his agents at the start of their tenancy. The Landlord provided a copy of a move-in condition inspection report to the Tenants in August or September 2023 (see condition report A). When the Tenants attended the move-out condition inspection, the condition inspection report used by the Landlord was different (see condition report B). I find that neither the Landlord nor his agents participated in a move-in condition inspection with the Tenants, or that a condition inspection report was completed in accordance with the Regulation as required under section 23 of the Act.

Residential Tenancy Policy Guideline #31-Pet Damage Deposits provides a statement of the policy intent of the legislation. PG#31 is intended to help parties understand issues that are likely to be relevant to the landlord's handling of the pet damage deposit at the end of the tenancy. A pet damage deposit is to be held by the landlord as security for damage caused by a pet. If there is no damage caused by a pet, the landlord is to return the pet damage deposit to the tenant within 15 days after the end of tenancy or receiving the forwarding address, whichever is later. Filing a claim within 15 days is not a reprieve.

I find the Landlord has not proven that any damage remaining in the rental unit at the end of the tenancy was caused by the Tenants' pets.

As a move-in condition inspection was not completed by the Landlord, I find under section 24(2) of the Act, that the Landlord has extinguished his right to claim against the security deposit and pet damage deposit for damage to the residential property.

Based on the testimonies of the parties, I accept the tenancy ended September 30, 2023, and the Tenants provided their forwarding address to the Landlord in writing and the Landlord received this September 29, 2023.

September 30, 2023 is the relevant date for the purposes of section 38(1) of the Act. The Landlord had 15 days from September 30, 2023 to repay the security deposit and pet damage deposit in full to the Tenants. Because the Landlord extinguished his right to claim against the security deposit and the pet damage deposit for damage done to the rental unit, his only option was to repay the deposits to the Tenants.

By October 15, 2023, the Landlord had not repaid the deposits to the Tenants, therefore, the Landlord must return double the deposits, **$5,900.00** ($1,475.00 X 2 + $1,475.00 X 2), to the Tenants pursuant to section 38(6) of the Act. Using the RTB Deposit Interest Calculator, there is **$103.68** of interest owed on the deposits.

I will now consider the Landlord's compensation claim for damages to the rental unit.

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

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.

Sections 23 and 35 of the Act states that, at the beginning and 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.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and,
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Washing machine repair:

The Landlord said the Tenants put an item in the washing machine that was easily separable, and it damaged the mechanics of the machine. The Landlord's repair person does not indicate the cause of the damage was due to improper washing of items loaded in the machine.

Residential Tenancy Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises (PG#1) clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

For major appliances, PG#1 states that the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant:

I find that the 'washer in premises' was an item included in the rent, so a service or facility provided by the Landlord to the Tenants of the rental unit. I find the Landlord is obligated to repair and maintain this item in the rental unit in accordance with section 32(1) of the Act. The Tenants cannot be required to maintain and repair appliances provided by the Landlord.

I find the Landlord has not proven on a balance of probabilities that the cause of the need for repairs in the washing machine was because of the Tenants' deliberate actions or neglect. I decline to grant compensation for this appliance repair.

New laminate flooring:

The Landlord submitted that the Tenants damaged the laminate flooring in the rental unit. The Landlord hired a company to do a property inspection report of the rental unit, and the company noted that water damage is observed, but no moisture is noted in the area. Neither the Landlord nor the company provided evidence that the damage was caused by the Tenants' pet.

The Tenants testified that they disclosed this damage to the Landlord, and suggested to the Landlord that this damage appeared to be new home warranty related.

A move-in condition inspection was not completed in the rental unit, although the Landlord asserted that the rental unit was a new build, and there were no damages at all in the home at the start of the tenancy. I find it is often the case that new builds do have warranty work or new home settling issues that show themselves after a bit of time living in the unit. The Landlord pointed to no evidence that he was investigating if these damages could be covered by warranty.

I find the Landlord also has not presented credible evidence about the actual amount required to address this repair.

The Landlord has sold the property, and he has an agreement with the new buyer, after the resolution of this dispute resolution matter, that he will make good and complete the repairs. I find the Landlord has not proven that the Tenants are responsible for the damage to the laminate flooring. The lack of a move-in condition inspection report, and the fact that this building is a new build open the door to too many possibilities as to the cause of the damage.

Based on the testimonies of the parties, the evidence, and on a balance of probabilities, I find that the Landlord has not substantiated this part of his compensation claim, and I decline to award a monetary order for this claim.

Repaint walls:

The Landlord said the Tenants painting repairs prior to vacating the rental unit are not satisfactory. The Landlord, and T.W. both agree that the Tenants' choice of paint finish was incorrect, and it is so obvious that it does not blend in with the remainder of the walls. The Landlord uploaded picture evidence of the mottled appearance of the paint on some of the walls in the rental unit.

It appears that the Tenants hired a property maintenance company that did complete some priming and painting work.

Residential Tenancy Policy Guideline #40-Useful Life of Building Elements (PG#40) provides a general guide for determining the useful life of building elements. The useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. PG#40 states that the useful life of interior paint is four years.

The paint on the walls in the rental unit were halfway through their useful life. I find that the Landlord has substantiated half of his claims for the painter's fee and the materials purchased which would correspond to the fact that the interior paint in the rental unit was halfway through its useful life. I decline to compensate the Landlord for his organizing, and supervisory time for these paint repairs to be completed. I grant the Landlord **$780.25** to cover half the costs of paint repairs completed in the rental unit.

Balcony cleaning and stain removal:

The Landlord seeks costs to clean stains and other dirt off the balcony of the rental unit. The Landlord said this is the Tenants' responsibility. The Tenants did not oppose being responsible for this cleaning.

I find the Tenants are responsible for cleaning the balcony of the rental unit, and I find the Landlord has established this claim. I grant the Landlord **$200.00** to cover the cost of the cleaning of the balcony.

Repair 2nd bathroom drain stopper:

The Landlord claims repair costs for a drain stopper in the second bathroom.

The Tenants testified that this repair was outstanding from when they were residing in the rental unit. The Tenants said the Landlord was looking for warranty coverage for this repair, but nothing came of it, and it remained an unfixed item while they were in their tenancy.

I find the Landlord has not substantiated this claim. I decline to grant compensation to the Landlord for this repair.

Repair wall oven:

The Landlord seeks repair costs for a wall oven. The Landlord did not prove that the Tenants were the cause of the damage to the oven. The two invoices found in the Landlord's materials do not total near the amount the Landlord is seeking. I find the Landlord has not established this claim and I decline to grant compensation to the Landlord for this matter.

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 62 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. Are the parties entitled to recovery of their application filing fees?

I find the parties in this matter were not well suited as landlord and tenants. The tenancy has ended, and this is for the best for everyone. Since the tenancy is over, I decline to make any orders against the Landlord about this tenancy, I decline to grant compensation to the Tenants as I find that both parties were equal in their pursuits, and I dismiss this claim made by the Tenants.

I find both parties are successful in their Applications, and as granting recovery of application filing fees is discretionary under section 72(1) of the Act, I do not grant them recovery of their application filing fees for their claims. Each party must bear the cost of their application filing fees in this matter.

The Tenants' monetary award is calculated as follows:

Item	Amount
Tenants' dispute of rent increase	$442.50
Security deposit doubled $1,475.00 X 2 =	$2,950.00
Pet damage deposit doubled $1,475.00 X 2 =	$2,950.00
Deposit interest*	$103.68
Settled amount claimed by Landlord	-$350.99
Repainting of walls	-$780.25
Balcony cleaning and stain removal	-$200.00
Total monetary award to Tenants:	$5,114.94

*There is no interest owed on the deposits in 2021 to 2022 as the amount of interest owed in those years was 0%. The amount of interest in 2023 was 1.95%. The amount of interest in 2024 was 2.7%. Interest is calculated on the original security and pet damage deposit amounts, before any deductions are made, and it is not doubled. Interest was calculated using the Residential Tenancies Online Tools: Deposit Interest Calculator.

Conclusion

I grant a Monetary Order to the Tenants in the amount of $5,114.94. 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 of British Columbia and enforced as an Order of that Court.

The Tenants' monetary claim is dismissed.

The Tenants' dispute of a rent increase is granted.

The Tenants' claim for an Order for the Landlord to comply with the Act, Regulation, and tenancy agreement is dismissed.

The Landlord's claim for compensation for damage to the rental unit was partially granted.

The parties must bear the cost of their respective filing fees.

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: August 27, 2024

Residential Tenancy Branch