

Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*). The tenant applied pursuant to section 38 of the *Act* for return of double his portion of the security deposit paid at the commencement of this fixed term tenancy agreement. The landlord applied for orders as follows:

1. a monetary order for unpaid rent or loss pursuant to section 67;
2. an order to be allowed to keep all or part of the security and pet deposits pursuant to section 38; and
3. to recover the filing fee from the landlord for the cost of this application pursuant to section 72.

The landlord and tenants were given full opportunity to be heard, to present evidence and to make submissions. Both parties sent their applications for dispute resolution to one another by registered mail. Both parties had Canada Post tracking numbers and acknowledged receiving the other parties' application for dispute resolution. I am satisfied that the parties were duly served with the applications for dispute resolution.

The landlord presented the joint tenant (the co-tenant), not named as a respondent in her application, as a witness. As the tenancy agreement in question was signed by both joint tenants, the co-tenant attended the hearing and provided evidence.

The tenant noted that the landlord's evidence package was received late. The landlord explained that she had tried to deliver the evidence package earlier. However, the tenant was using his advocate's address as his forwarding address and the advocate was not available. The tenant's advocate stated that she had discussed the landlord's evidence package with the tenant. I accept that the late receipt of the landlord's evidence package has not compromised the tenant's ability to respond to the case against him and have considered the evidence submitted by the parties.

The tenant's advocate amended the tenant's application from an application for a return of twice his \$400 security deposit to a return of twice his \$350.00 security deposit. The tenant's advocate also amended the tenant's evidence to reflect that the termination date of the fixed term tenancy signed by the co-tenants was June 30, 2009, and not April 30, 2009, as originally submitted.

Issues(s) to be Decided

Is the tenant entitled to a monetary order in the amount of \$700.00, twice the amount of the security deposit he paid, due to the landlord's omission to return his security deposit within fifteen days of receiving his forwarding address?

Is the landlord entitled to a monetary order for unpaid rent or loss under the *Act* or the tenancy agreement? Is the landlord entitled to return of her filing fee for this application?

Background and Evidence

The landlord testified that this tenancy was signed by the tenant and the co-tenant on December 30, 2008. Under the terms of this fixed tenancy agreement, the two tenants were held jointly and severally responsible for the lease of the rental premises from January 1, 2009 until June 30, 2009. The tenants committed to vacate the premises "unless a lease renewal is signed by all parties." No such renewal has been signed. Rent was established at \$1,675.00 per month plus utilities. A written agreement that the parties attached to the lease indicated that the tenants were responsible for \$1,200.00 in paid rent plus approved work they might perform to a monthly maximum of \$475.00. If they did not perform this work for the landlord during the month, the difference between the work performed and \$475.00 would be added to their rent. Any work that was to be performed had to be done on the basis of a written project description with the terms of payment outlined.

The landlord's oral and written evidence varied at points because she was unable to locate the complete written evidence package she sent to the tenant and the Residential Tenancy Branch.

Background and Evidence – Security Deposit

The landlord testified that she received \$700.00 as a security deposit for the rental premises on December 29, 2008. Each tenant paid half of this security deposit.

The landlord and the co-tenant testified that the tenant vacated the premises on or about March 31, 2009 or early April 2009. The tenant testified that he provided written notice of his intention to vacate the premises to the landlord on February 28, 2009 when he left a note and \$600.00 in cash in an envelope for the landlord under the door in her office. He provided no copy of that notice, nor did he have a receipt for this rental payment. The landlord testified that she never received the notice or the cash payment.

The landlord and the co-tenant testified that the co-tenant gave the landlord his written permission to apply the \$700.00 security deposit from this tenancy towards unpaid rent. The co-tenant gave sworn testimony that he did so because he had been unable to meet the ongoing rental obligations of the joint tenancy.

The tenant gave evidence that he sent the landlord a request to have his portion of the security deposit returned to him by registered mail on February 2, 2010. He entered into evidence a copy of the Canada Post tracking number for that request and a copy of the landlord's receipt of that registered letter on February 22, 2010. He maintained that he was entitled to receive double the amount of the security deposit he had paid on December 29, 2008 (i.e., \$350.00) from the landlord due to her refusal to return the security deposit to him within fifteen days of receipt of his forwarding address in February 2010.

Both parties maintain that they are entitled to an order allowing them to keep the security deposit paid on December 28, 2008.

Analysis - Security Deposit

Section 38(4) of the *Act* allows a landlord to retain an amount from a security deposit if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant or if a Dispute Resolution Officer orders that the landlord may retain the amount. Section 72(2) authorizes a Dispute Resolution Officer to deduct from a monetary order from any security deposit owing.

Although the tenant paid half of the security deposit, he did so on the basis of a joint tenancy. Both the tenant and the co-tenant are jointly and severally liable for all of the undertakings committed to in their fixed term tenancy. The landlord is under no obligation in such circumstances to consider applications from joint tenants for access to their individual portions of the security deposit. When the tenant vacated the premises prior to the expiration of the fixed term tenancy agreement, the landlord remained able to take action against either or both of the tenants who signed that agreement. Similarly, either of the tenants who signed the agreement could make binding commitments regarding the distribution of common assets such as the security deposit or commonly shared liabilities.

The landlord and the co-tenant provided written and sworn testimony that the co-tenant agreed to let the landlord retain the \$700.00 security deposit in partial satisfaction of unpaid rent. I am satisfied that by the time the tenant sent the landlord a request to return his portion of the security deposit and provided his forwarding address to the landlord in February 2010, this fixed term tenancy had expired and the co-tenant had authorized the landlord to keep the security deposit for rent owing.

I deny the tenant his request to have twice his portion of the security deposit returned to him. I authorize the landlord to retain the security deposit in partial satisfaction of the monetary award issued in the landlord's application.

Landlord's Application - Background and Evidence – Unpaid Rent

Landlord's Evidence

The landlord requested a monetary award against the tenant as she maintained that he is jointly and severally liable for the obligations he committed to when he signed the fixed term tenancy agreement.

The landlord submitted the following evidence regarding the amount of rent she received from the two tenants from January to June 2010:

Month	Rent Owning	Rent Paid by Tenant	Rent Paid by Co-Tenant	Work Performed in lieu of Rent
January 2009	\$1,675.00	\$600.00	\$600.00	\$475.00
February 2009	\$1,675.00	131.00	582.00	240.00
March 2009	\$1,675.00	0	318.00	475.00
April 2009	\$1,675.00	0	0	475.00
May 2009	\$1,675.00	0	0	475.00
June 2009	\$1,675.00	0	0	475.00
Total Rent Owning	\$10,050.00	\$731.00	\$1500.00	\$2615.00

The landlord gave oral testimony that she was satisfied that no rent was owing for January 2009. She also testified that all work performed in accordance with the work agreement following January 2009 was performed by the co-tenant. The landlord also testified that with the permission of the co-tenant she had applied the \$700.00 security deposit towards the unpaid rent. By these calculations, the landlord's evidence indicated that the amount owing for unpaid rent for the six-month lease was \$5,204.00 less \$700.00 from the security deposit for a total of \$4,504.00.

The co-tenant testified that the listing of rent payments and work performed for the landlord as set out above is correct.

The tenant's representative asked the landlord and the co-tenant to outline the steps they had taken to mitigate the tenant's rental losses. The landlord testified that she had

identified one potential tenant, but was unwilling to include him in the lease of the rental premises without the co-tenant's agreement. Both she and the co-tenant testified that the co-tenant met with the prospective tenant. The co-tenant did not believe that the prospective tenant was suitable, so no further action was taken in that regard. The landlord also said that she placed an advertisement on a local rental website and that she advertised the availability of the rental premises in her office where she had been successful in attracting tenants in the past. The co-tenant testified that he too had been active in trying to find a new co-tenant to replace the tenant. He testified that one of these individuals obtained work in another community. The other prospective tenant he located was unable to obtain transportation from his Interior community.

Tenant's Evidence

During the hearing, the tenant outlined the rent he paid and the work he performed for the landlord in accordance with the work agreement with the landlord. The tenant confirmed the landlord's testimony that he paid \$600.00 for January 2009 and \$131.00 in cash on February 3, 2009 for the February 2009 rent. He testified that he made a \$600.00 cash payment for his March 2009 rent on February 28, 2009. He provided a January 28, 2009 invoice for \$150.00 for dumping material for the landlord and another invoice for an additional \$260.00 which he maintained was to remove fibreglass for the landlord. He also testified that he submitted an additional \$296.00 bill to the landlord for dumping fees to be applied to his February 2009 rent.

Analysis- Unpaid Rent

I accept that as a joint tenant, the tenant is responsible for unpaid rent during the course of the six-month fixed term tenancy. Although the co-tenant remained in the rental premises for the duration of the six-month period, I accept that both the landlord and co-tenant did make attempts to find another tenant to share the rent with the co-tenant and mitigate the tenants' responsibility for unpaid rent and utilities.

I accept the undisputed evidence regarding the tenant's \$600.00 payment for the January 2009 rent and his \$131.00 rent payment for February 2009. I also accept the

undisputed evidence provided by the landlord and the co-tenant regarding the co-tenant's rent payments and his work contribution to the overall \$1,675.00 owing during the course of the six-month lease.

I do not accept as credible the tenant's testimony that he made a \$600.00 cash payment by placing this in an envelope under the landlord's door on February 28, 2009. The monetary award set out below does not reflect any payment by the tenant for March 2009.

As the landlord testified that rent was paid for January and work was performed by the tenants, the January 2009 rent is not at issue. Since the landlord did not question the two invoices submitted by the tenant or the basis for performing that work, I find that the tenant did complete work covered by the two invoices in the amount of \$410.00 as part of the work agreement. However, it was unclear whether either of the tenant's invoices were included in the landlord's allowance of \$475.00 for work performed by the two tenants in January 2009. The landlord and the co-tenant testified that the co-tenant performed work for the landlord as part of the work agreement for January 2009. I credit half of the \$475.00 credit given for work performed in January 2009 (\$237.50) to the tenant and half to the co-tenant. This reduces the February 2009 credit for work performed by the tenant as per his invoices from \$410.00 to \$172.50 (i.e., $\$410.00 - \$237.50 = \$172.50$). Based on the evidence presented, the maximum monthly work agreement allowance that could be credited to the two tenant's \$1,675.00 monthly rent was \$475.00. Nothing in the work agreement allows the two tenants to reduce their monthly financial rent obligation below \$1,200.00. The landlord and the co-tenant testified that the co-tenant performed \$475.00 of work for the landlord in March 2009. I do not accept the tenant's claim that he performed additional work for the landlord to be credited to either February or March 2009. He provided no receipts to confirm this work, nor did he present any approved work plans as set out in the work agreement. As outlined in the following table, I only authorize the addition of \$172.50 for the tenant's work performed for February 2009 to the \$240.00 entered into testimony by the landlord and co-tenant.

Month and Item	Amount
January 2009 Rent Owing	\$1,675.00
January 2009 Rent Paid (\$600.00 + \$600.00)	-1,200.00
January 2009 Work Performed in Lieu of Rent	-475.00
February 2009 Rent Owing	\$1,675.00
February 2009 Rent Paid (\$582.00 + \$131.00)	-713.00
February 2009 Work Performed in Lieu of Rent (\$240.00 + \$172.50)	-412.50
March 2009 Rent Owing	\$1,675.00
March 2009 Rent Paid	-318.00
March 2009 Work Performed in Lieu of Rent	-475.00
April 2009 Rent Owing	\$1,675.00
April 2009 Work Performed in Lieu of Rent	-475.00
May 2009 Rent Owing	\$1,675.00
May 2009 Work Performed in Lieu of Rent	-475.00
June 2009 Rent Owing	\$1,675.00
June 2009 Work Performed in Lieu of Rent	-475.00
Monetary Award for Rent Owing	\$5,031.50

Background and Evidence – Unpaid Utilities

The landlord asked for a monetary order to recover the District's utility bill for the rental premises. She submitted an April 2, 2009 utility bill in the amount of \$158.27 for the billing period from December 5, 2008 until April 2, 2009. She submitted a second utility bill of April 19, 2010 which applied to the billing period from December 5, 2009 until April 16, 2010 for \$94.07. Under questioning from the tenant's advocate, the landlord agreed that this bill did not apply to the correct period of time. She said that she paid \$129.43 for the billing period following the April 2, 2009 billing. The landlord conceded that she had submitted a bill for the billing period from December 5, 2009 until April 16, 2010 which has no bearing on the period from April 2, 2009 until June 30, 2009. She said that she assigned the tenant one-third of this cost which she calculated as \$43.14 for the remaining period of the tenant's responsibility for the utility bill. The total cost for utilities that the landlord was seeking was \$201.41.

The tenant's advocate questioned the validity of the landlord's request for recovery of the unpaid utility bill for the rental premises. She noted that the landlord's \$158.27 applied to the billing period from December 5, 2008 until April 2, 2009. She noted that

this billing period applied to a period in December 2008, prior to the commencement of the tenancy agreement. The landlord responded that no one was renting the premises in December 2008, so the utility use from December 5, 2008 until the end of December 2008 would have been minimal.

Analysis - Unpaid Utilities

I do not find that the tenant is responsible for that portion of the utility bill from December 5, 2008 until December 31, 2008. There is insufficient evidence to support the landlord's claim that the tenant should be responsible for the first 27 days of the 119 day billing period ending on April 2, 2009. As such, I have reduced the monetary award for the \$158.27 utility bill by 27/119. In the monetary order, I include \$122.36 (i.e., $\$158.27 \times .77311$) for the unpaid utilities for the period ending April 2, 2009.

The landlord admitted that she submitted a bill from the following year to support her application for unpaid utility bills from April 2, 2009 until June 30, 2009. The landlord's evidence regarding this period was incomplete and inconsistent. I make no award for unpaid utility bills for the period from April 2, 2009 until June 30, 2009.

Background and Evidence – Late Fees

The landlord asked for \$25.00 per month for late fees/NSF penalties for each of the six months of the lease for a total of \$150.00.

Analysis - Late Penalty

I allow a late penalty of \$25.00 per month for five months as set out in the tenancy agreement for a total of \$125.00. I do so because the landlord provided sworn testimony stating that there was no rent outstanding for January 2010.

Conclusion

I dismiss the tenant's application for return of twice his portion of the security deposit. I authorize the landlord to retain the tenants' security deposit. I grant the landlord a monetary order in the amount of \$4,628.86 on the following terms:

Total Unpaid Rent	\$5,031.50
Unpaid Utility Bills	122.36
Late Fees	125.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$4,628.86

As the landlord has been successful in her application, the monetary order allows for recovery of the landlord's filing fee for this application.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders 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 *Residential Tenancy Act*.