



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application and evidence submissions on file.

### **Preliminary Issue – Adjournment request by Tenant**

At the outset of the hearing, the tenant requested an adjournment citing that her computer has been broken and she lacks the funds to have it fixed. The tenant stated she had important documents on the computer that she wanted to present as evidence for this hearing. The tenant also stated she has been sick and suffering from PTSD since being evicted from this tenancy.

The landlord objected to the adjournment request stating this dispute was filed over 9 months ago and a further delay would be prejudicial to the landlord in recovering outstanding fees.

The tenant's adjournment request was denied as I find a further delay would be prejudicial to the landlord. I find that the tenant had over 9 months to prepare and submit evidence for this hearing. The tenant provided no documentation in support of

how the aforementioned health concerns prevented her from responding to the dispute in a timely manner.

### Issues

Is the landlord entitled to a monetary award for monetary loss and unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord obtained an order of possession with respect to this tenancy on March 29, 2022. The landlord testified the order of possession was served on the tenant by registered mail which was returned unclaimed. The landlord obtained a writ of possession and on June 7, 2022 the tenants were evicted by court appointed bailiffs.

The landlord is claiming \$4770.45 for the bailiffs' fees. An invoice was provided in support of the amount claimed. The landlord is also claiming an amount of \$54.00 which was outstanding in rent. The landlord submitted a tenant rent ledger in support of this outstanding amount.

The tenant testified that she never received any notice to end tenancy or they would have vacated. The tenant argued that they should never have been evicted as they paid the rent throughout the tenancy aside from the rent increase portion.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

I accept the landlord's claim for \$4770.45 in bailiffs fees and find the landlord suffered this loss as the tenant failed to comply with the order of possession and provide vacant possession to the landlord. If the tenant had a dispute with the Notice to End Tenancy or not being served any Notice to End Tenancy the tenant could have disputed the Notice or filed an application for a Review Consideration of the decision awarding the landlord an order of possession. I find the landlord would have been required to provide

proof of service of the order of possession before obtaining a writ of possession from the Supreme Court of BC. I also accept the landlord's claim for outstanding rent of \$54.00 as evidenced by the tenant rent ledger.

I find the landlord has suffered a loss as claimed in the amount of \$4824.45.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$4924.45.

The landlord continues to hold a security deposit in the amount of \$900.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4024.45.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4024.45. Should the tenant 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.

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*.

Dated: March 14, 2023

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Residential Tenancy Branch