



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Introduction

---

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on September 9, 2023. The Tenant applied for the return of their security deposit and the return of their filing fee.

The Landlord’s Application for Dispute Resolution was made on January 4, 2024. The Landlord applied for a monetary order for losses due to the tenancy, a monetary order for unpaid rent, permission to retain the security and pet damage deposits and to recover their filing fee.

Both the Tenant and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue – Missing Monetary Worksheet

---

At the outset of these proceedings the Landlord’s application was reviewed, noting that the Landlord was claiming for \$3423.28 in compensation for damages to the rental unit. It was also noted that the Landlord had not submitted form #RTB-37 Monetary Work

Sheet with their application to these proceedings, to show the detailed calculation of their monetary claim.

The Landlord was asked to present their detailed calculations of their claim, the Landlord confirmed that they had not filled form #RTB-37, Monetary Work Sheet nor could they recall submitting any form of a breakdown of the amount claimed into documentary evidence.

The Landlord testified that the amount claimed was for several items and that they had submitted the invoices into evidence but that they had not provided a written breakdown to the Tenant.

The Rules of Procedure section 2.5 states the following:

**Documents that must be submitted with an Application for Dispute Resolution**

“To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.”

Due to the absence of a detailed calculation of this monetary claim, I find that it would be procedurally unfair to the Tenant to proceed in this hearing on the Landlord’s claim for \$3423.28 in compensation for damages to the rental unit, and I dismiss the Landlord’s claim for compensation for damages to the rental unit, with leave to reapply.

I will continue in these proceedings, on the remaining issues indicated on the Landlord’s and Tenant’s applications.

## Issues to be Decided

---

- Is the Landlord entitled to monetary award for unpaid rent under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit?
- Is the Tenant entitled to the return of their security and pet damage deposits?
- Is the Tenant entitled to recover the cost of the filing fee?
- Is the Landlord entitled to recover the cost of the filing fee?

## Background and Evidence

---

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

The Tenancy agreement recorded that this tenancy began on March 13, 2021, as a one-year fixed-term tenancy that continued as a month-to-month tenancy at the end of the initial fixed term. Rent for this tenancy was set at the amount of \$3,000.00 and was to be paid by the first day of each month, with a \$1,500.00 security deposit and \$1,500.00 pet damage deposit (the “deposits”). The Tenant submitted a copy of the tenancy agreement with a one-page addendum into documentary evidence.

The parties agreed that this tenancy ended on August 31, 2023, and that the Tenant had provided the Landlord with their forwarding address by registered mail sent on September 2, 2023.

The Landlord testified that they did not conduct a written move-in inspection, nor did they complete a written move-out inspection for this tenancy.

The Tenant submitted that they never gave the Landlord permission to retain their deposits for this tenancy.

The Landlord agreed that they had not obtained written permission to retain the deposits for this tenancy. The Landlord also agreed that as of the date of these proceedings, they have kept the full deposits for this tenancy.

The Landlord submitted that they were claiming for \$1,500.00 in unpaid rent for this tenancy for the August 2023, rental period.

The Tenant agreed that they owed \$1,500.00 in rent for the August 2023 rental period for this tenancy.

## Analysis

---

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that they did not conduct a written move-in inspection for this tenancy. Section 23 of the *Act* states the following:

***Condition inspection: start of tenancy or new pet***

***23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.***

***(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if***

***(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and***

***(b) a previous inspection was not completed under subsection (1).***

***(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.***

***(4) The landlord must complete a condition inspection report in accordance with the regulations.***

***(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.***

***(6) The landlord must make the inspection and complete and sign the report without the tenant if***

***(a) the landlord has complied with subsection (3), and***

***(b) the tenant does not participate on either occasion.***

Section 19 of the Residential Tenancy Regulation (the “Regulations”) sets out the form for that inspection, stating the following:

***Disclosure and form of the condition inspection report***

***19 A condition inspection report must be***

- (a) in writing,*
- (b) in type no smaller than 8 point, and*
- (c) written so as to be easily read and understood by a reasonable person.*

Pursuant to section 23 of the Act, I find that the Landlord breached section 23 of the Act when they did not conduct a written move-in inspection with the Tenant at the beginning of this tenancy as required. Section 24(2) of the Act outlines the consequences for a landlord when the inspection requirements are not met.

***Consequences for tenant and landlord if report requirements not met***

***24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Pursuant to section 24(2) of the Act, I find that the Landlord extinguished their right to make a claim against the deposits for damage to the residential property for this tenancy.

Furthermore, I also accept the testimony of the Landlord that they did not conduct a written move-out inspection at the end of this tenancy. Section 35 of the Act states the following:

***Condition inspection: end of tenancy***

***35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit***

- (a) on or after the day the tenant ceases to occupy the rental unit,*  
*or*
  - (b) on another mutually agreed day.*
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.***

*(3) The landlord must complete a condition inspection report in accordance with the regulations.*

*(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

I find that the Landlord breached section 35 of the *Act* when they did not conduct a written move-out inspection with the Tenant at the end of this tenancy as required.

Section 36(2) of the *Act* outlines the consequences for a landlord when the inspection requirements are not met.

***Consequences for tenant and landlord if report requirements not met***

***36 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Pursuant to section 36(2) of the *Act*, I find that the Landlord had again extinguished their right to make a claim against the deposits for damage to the residential property for this tenancy.

I have reviewed the Landlord's application and I note that the Landlord has also applied for the recovery of unpaid rent. As section 36 of the *Act* only extinguished the Landlord's right to make a claim against the deposits for damage to the residential property, I find that the Landlord was within their rights to make a claim against the security deposit for unpaid rent for this tenancy.

However, this did not extend the timeline for the right of the Landlord to claim against the security deposit, they were still required to submit their claim against the security deposit for unpaid rent within the legislated timeline, as set by section 38 of the *Act*.

Additionally, this also did not permit the Landlord to retain the pet damage deposit pending a claim for unpaid rent for this tenancy. Section 38(7) of the Act states the following:

***Return of security deposit and pet damage deposit***

*(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*

Pursuant to section 37(7) of the Act, a pet damage deposit may only be held pending a claim for pet damage to the rental unit. Therefore this Landlord had extinguished their right to make a claim against the pet damage deposit for damages to the rental unit for this tenancy.

Section 38 of the Act sets the requirements on how the security and pet damage deposits are handled at the end of a tenancy, stating the following:

***Return of security deposit and pet damage deposit***

***38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of***

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

*(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*

*(3) A landlord may retain from a security deposit or a pet damage deposit an amount that*

- (a) the director has previously ordered the tenant to pay to the landlord, and*
- (b) at the end of the tenancy remains unpaid.*

*(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on August 31, 2023. In addition, I also accept the testimony of the Tenant that they sent their forwarding address to the Landlord by registered mail on September 2, 2023, and I find that pursuant to section 90 of the Act, the Landlord was deemed to have been in receipt of the Tenant's forwarding address, five days later, on September 7, 2023.

Accordingly, I find that the Landlord had until September 22, 2023, to comply with sections 38(1) of the Act by repaying the deposits in full to the Tenant, as the Landlord had extinguished their right to claim against the pet damage deposit for this tenancy and the Landlord had filed to file their claim against the security deposit for unpaid rent within the required timeline.

However, in this case, the Landlord did not return the pet damage deposit, as required, and delayed in filing a claim against the security deposit for unpaid rent until January 4, 2024.

Section 38(6) of the Act goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the value of the deposits.

***Return of security deposit and pet damage deposit***

***38 (6) If a landlord does not comply with subsection (1), the landlord***

***(a) may not make a claim against the security deposit or any pet damage deposit, and***



*(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the Act, the value of the deposits for this tenancy has doubled to the amount of \$6,000.00 due to the Landlord's breaches of the Act.

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

As for the Landlord's claim for a monetary order for unpaid rent Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

***Rules about payment and non-payment of rent***

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

*(2) A landlord must provide a tenant with a receipt for rent paid in cash.*

*(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

*(a) seize any personal property of the tenant, or*

*(b) prevent or interfere with the tenant's access to the tenant's personal property.*

*(4) Subsection (3) (a) does not apply if*

*(a) the landlord has a court order authorizing the action, or*

*(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.*

In this case, I accept the agreed upon testimony of these parties that the full rent has not been paid for August 2023, and I find that the Tenant breached section 26 of the Act when they did not pay the rent in full as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,500.00 for unpaid rent.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary award requested?**

I grant the Landlord permission to retain \$1,500.00 from the doubled value of the deposits for this tenancy in full satisfaction of the amount awarded to them in this decision.

**Is the Tenant entitled to the return of their security and pet damage deposits?**

The Landlord is ordered to return the remaining \$4,500.00 in deposits they are holding for this tenancy, plus interest on the original amount of the deposits, in the amount of \$68.68, to the Tenant within 15 days of the date of this decision.

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

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to recover their deposits, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application.

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

Due to the numerous breaches of the *Act* by the Landlord, I decline to award the Landlord the recovery of their filing fee paid for their application.

Overall, I award the Tenant a monetary order in the amount of \$4,668.68, consisting of \$6,000.00 in the return of the doubled value of the security and pet damage deposits for this tenancy, \$68.68 in interest due on the original amount of the deposits, \$100.00 in the recovery of the Tenant's filing fee paid for their application to these proceedings, less \$1,500.00 in the amount awarded to the Landlord in this decision.

## Conclusion

---

I find that the Landlord breached section 23 of the *Act* when they failed to conduct the written move-in inspection with the Tenant as required for this tenancy.

I find that the Landlord breached section 35 of the *Act* when they failed to conduct the written move-out inspection with the Tenant as required for this tenancy.

I find that the Landlord breached section 38 of the *Act* when they failed to repay the security and pet damage deposits for this tenancy to the Tenant, as required after they extinguished their right to make a claim against the pet deposit and failed to file a claim within the legislated timeline against the security deposit for this tenancy.

I find that the value of the security and pet damage deposits paid for this tenancy have doubled in value due to the Landlord's breach of sections 23, 35 and 38 of the *Act*.

I grant the Landlord permission to retain \$1,500.00 from the doubled value of the deposits for this tenancy in full satisfaction of the amounts awarded to them in this decision.

I grant the Tenant a **Monetary Order** in the amount of **\$4,668.68** for the return of their remaining doubled value of the security and pet damage deposits, plus interest and the recovery of their filing fee pursuant to sections 38, 67 and 72 of the *Act*. The Tenant is provided with this Order in 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.

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: February 14, 2024

---

Residential Tenancy Branch