

DECISION

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenants file their own application seeking the following relief under the *Act*:

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

This matter had been originally scheduled for May 13, 2024, but was adjourned pursuant to my interim reasons from the same date.

At the reconvened hearing, P.C. attended as the Landlord. M.B. and B.K. attended as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

This hearing dealt with the Landlord's Application for Dispute Resolution under the

Service of the Landlord's Application and Evidence

At the original hearing, the Tenants acknowledged receipt of the Landlord's application and evidence without issue. The Landlord had failed to provide her evidence to the Residential Tenancy Branch, which I permitted her to do as per my interim reasons.

At the reconvened hearing, I confirmed the documents received by the Residential Tenancy Branch were, in fact, received by the Tenants as they acknowledged on May 13, 2024. The Tenants did confirm receipt of the Landlord's evidence as provided by her

to the Residential Tenancy Branch, though deny receipt of a video uploaded to the Residential Tenancy Branch by the Landlord. The Landlord confirmed that she did not serve the video.

Dealing with the Landlord's application and documentary evidence, I accept it was served without issue as confirmed by the Tenants. I find under s. 71(2) of the *Act* that these documents were sufficiently served on the Tenants.

With respect to the video evidence, as this was not served, I do not include or consider it as it would be procedurally unfair to do so. Accordingly, the Landlord's video is excluded.

Service of the Tenants' Application and Evidence

At the original hearing, the Tenants advise that they did not serve their application on the Landlord, speaking to some unfamiliarity with the process.

It is an applicant's responsibility to serve each named respondent with their application. This obligation is crucial to maintaining a procedurally fair process, namely that respondents have notice of the claims being advanced against them.

As the Tenants failed to serve their application, I find it should be dismissed. Given the nature of the Landlord's application, which is being advanced against the security deposit, the question of the security deposit and its return must be dealt with regardless of whether the Tenants had filed their own application.

As such, the question of the security deposit need not be redetermined or refiled by the Tenants. I, therefore, dismiss the Tenants' application, in its entirety, without leave to reapply. The issues raised in their application will be determined in this matter on the Landlord's application.

The Tenants further advised at the original hearing that they served their evidence by leaving a package at the Landlord's address. The Landlord had issues with its receipt as she is not currently residing there due to renovations, though acknowledged a package had been received but was unopened at the time of the original hearing.

At the reconvened hearing, the Landlord confirmed the package contained the Tenants' evidence and acknowledges its receipt. I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenants' evidence.

Issues to be Decided

- 1) Is the Landlord entitled to compensation for unpaid rent?
- 2) Is the Landlord entitled to compensation for damage caused to the residential property or rental unit by the Tenants or their guests?

- 3) Is the Landlord entitled to retain the security deposit in partial satisfaction of her monetary claims.
- 4) Is the Landlord entitled to her filing fee?

Evidence and Analysis

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

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on January 1, 2023.
- The Tenants vacated the rental unit on January 1, 2024.
- Rent was due on the 1st day of each month.
- A security deposit of \$1,500.00 was paid by the Tenants.

I have been provided with a copy of the tenancy agreement, which lists monthly rent of \$3,000.00 and an obligation to pay 30% of the utilities. At the hearing, the parties confirmed rent was \$3,150.00.

I asked why there was a discrepancy between the tenancy agreement and what was confirmed by the parties. The Landlord explained that utilities was paid in a fixed amount, such that on average monthly payments were \$3,150.00. The Landlord further explained that there is a reconciliation on utility payments at the end of the tenancy by reference to the amounts paid under the invoice.

With respect to the arrangement the parties had with payment of the utilities, I find that there is a blurring between the obligation to pay rent and pay utilities, which are distinct contractual obligations. The tenancy agreement is unambiguous: rent is \$3,000.00.

I question the fixed payment methods described by the Landlord, which runs contrary to the 30% obligation set by the tenancy agreement. I would expect the payments to fluctuate month to month and would very likely not be a round number. Further, the Tenants are entitled to receipt of utility statements prior to their payment.

In any event, I accept that rent, as per the tenancy agreement, was in the amount of \$3,000.00 and do not include the fixed amount for utilities specified by the parties as that is contrary to the explicit wording of the tenancy agreement.

Test Relevant to the Monetary Claims

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of *the Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) Is the Landlord entitled to compensation for unpaid rent?

For this claim, the Landlord seeks \$3,150.00 in compensation and describes the claim as follows in her application:

Monetary compensation for unpaid rent for month of January, 2024

At the hearing, the Landlord specified that she seeks additional rent compensation for February 2024. I note that the Landlord's application was filed on January 17, 2024 such that the application, when filed, could not have included the additional amount claimed.

Though no amendment was filed by the Landlord, I find that it is appropriate to amend the Landlord's application under Rule 7.12 of the Rules of Procedure to include the greater amount claimed as the increase could be reasonably anticipated.

Claim for Lost Rental Income

The Landlord argued that the Tenants vacated the rental unit early and that she lost rental income for the months of January and February 2024 due to their early departure. The Landlord drew my attention to the tenancy agreement, which lists it was for a fixed term ending on August 31, 2024. The Landlord testified that she received notice from the Tenants on or about December 1, 2023 that they would be vacating the rental unit.

The Tenants, for their part, clarified that they originally gave informal notice of their departure in early November 2023 followed by a formal notice sent via email and left at the Landlord's address for service. The Tenants' evidence includes a copy of the formal notice, which is dated November 26, 2023 and lists an effective date for their departure as December 31, 2023.

The Landlord indicates that she posted an advertisement for the rental unit shortly after receiving the Tenants' notice, offering the rental unit for rent on January 1, 2024 for the same rent paid by the Tenants under their tenancy agreement. The Landlord says she had no success until late February 2024 when an acquaintance referred her to an individual that took occupancy of the rental unit on March 1, 2024.

The Landlord's evidence contains a screenshot of advertisements posted for the rental unit, which shows the first was posted on November 27, 2023.

The Tenants argued that the residential property was in a poor state of repair. The Tenants cited this as the reason they ended their tenancy. They further argued that the residential property had a black fly infestation in December 2023, which they speculate was from a dead rodent in the wall.

The Tenants testified that they cooperated in the Landlord's efforts to re-rent the rental unit by providing access as necessary and keeping their rental unit clean. The Tenants say that the Landlord did, however, cancel viewings. The Landlord indicates that she did cancel a viewing on one occasion, though this was due to snowfall.

Early End to the Tenancy

A tenant may end a tenancy by giving notice in accordance with s. 45 of the *Act*.

In the case of fixed term tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice, cannot be earlier than the date specified in the tenancy agreement as the end of the tenancy, and is on a day before rent is due under the tenancy agreement.

In the circumstances of this tenancy, the soonest the Tenants could end their tenancy was August 31, 2024 provided the Landlord was served with the notice to end tenancy at least one month prior to that date.

The Tenants argued that their notice of November 26, 2023 was proper and sufficient. I agree that it would have been, had the tenancy been on a month-to-month basis. However, there is no dispute that the fixed term ended on August 31, 2024.

The Tenants argued that there were maintenance issues at the residential property and with their rental unit. I find that these are largely irrelevant. The Tenants cannot unilaterally escape the tenancy agreement by citing issues with the Landlord's breach of the tenancy agreement.

Conceivably, the Tenants could have ended their tenancy sooner than August 31, 2024 had they given notice to the Landlord of a breach of a material term of the tenancy agreement as contemplated by s. 45(3) of the *Act*. This means written notice to the Landlord of the alleged breach of a material term, setting a reasonable period for the Landlord to correct the breach, and then setting an effective date for ending the tenancy should the Landlord fail to correct the breach.

The Tenants confirmed at the hearing that no notice of a breach of a material term, citing the repair issues or any other issues, was ever served by them on the Landlord.

I find that the Landlord has established that the Tenants ended their tenancy in breach of the fixed term portion of the tenancy agreement and in contravention of s. 45(2) of the *Act*. I further find that the Landlord suffered lost rental income due to the Tenants' breaches.

I accept that attempts to re-rent the rental unit were made immediately upon notice of the Tenants' vacating, which was done on November 27, 2023. I further accept that the Landlord was unsuccessful in finding a new occupant until March 1, 2024.

The Tenants argued that the rental unit and residential property were in a poor state of repair, which adversely affected its marketability. Presumably, their tenancy at the residential property, which started in January 2023, is proof that the residential property was not in so poor of a condition that no one was interested in residing there.

Simply put, the Tenants chose to stay there, which demonstrates the residential property was at least marketable in January 2023. Further, I doubt that the state of the residential property would have deteriorated significantly in 2023 in such a manner that would have adversely affected its marketability.

I find that the Landlord has both proven lost rental income for January and February 2024. I further find that she mitigated her damages to the extent possible by posting an advertisement in a timely fashion.

I find that the Landlord is entitled to 2 months in lost rental income, which totals \$6,000.00 (\$3,000.00 x 2). I do not include the fixed utilities as pled in the Landlord's application as this is contrary to the explicit wording of the tenancy agreement.

2) Is the Landlord entitled to compensation for damage caused to the residential property or rental unit by the Tenants or their guests?

Section 32(2) and 32(3) of the *Act* imposes an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

Landlord's Claim as Stated in the Application

The Landlord claims \$3,079.25 in compensation, describing her claim as follows in her application:

Tenant hacked into the coin operated washing machine. Ordered a service key to tamper the system to obtain free laundry. Damage was repaired 3 x but the machine needs to be replaced due to ongoing issues. Repair cost by BK Electric -\$245.00 Repair cost washing machine 17/ 7/2023 = \$334.25 by Penguin

Appliance Repair cost washing machine Nov 2023 \$300.00 Replacement Cost approx \$2200

The Landlord did not provide a monetary order worksheet in her evidence, nor were any receipts submitted into evidence.

Alleged Damaged to the Washing Machine

The Landlord alleges that the Tenants were party, along with the other occupants at the residential property, to the tampering of the coin operated laundry machine at the residential property.

The Landlord says that one of the other occupants at the residential property, E.W., has already been found responsible for the damage and referred me to a previous decision from the Residential Tenancy Branch. The file number for the previous matter is noted on the cover page of this decision.

The Landlord specifically alleges that the Tenants' roommate, a J., damaged the laundry machine and drain hose and that the Tenant B.K. purchased a key to open the coin lock box in an attempt to get free laundry.

The Tenants acknowledge that B.K. purchased the key, but say they felt bad after its use on one occasion. I am told by the Tenants that their roommate, J., then took the key and left it in the laundry room for the use of other occupants. The Tenants say they then hid the key. The Tenants further acknowledge that J. pried open the lock box, but otherwise deny damage to the laundry machine.

The Landlord argued that the Tenants, and other occupants, conduct all contributed to the damage of the laundry machine. I am told by the Landlord that the laundry machine requires replacement, though the Landlord's evidence contains no evidence to support this. I am further told by the Landlord that the laundry machine has not yet been replaced.

Dismissal of the Claim

Even if I were to accept that the Tenants or their roommate damaged the laundry machine, there is a fatal flaw in the Landlord's claim: she has provided no evidence to support the amount sought in her application.

The claim is particularized in her application, though there are no receipts, invoices, or estimates to support what is claimed. The Landlord is seeking \$3,079.25 from the Tenants and acknowledges that the most significant portion, being the laundry machine, has not yet been replaced. Nor is there evidence to support that the laundry machine, in fact, requires replacement.

I am also concerned that the Landlord is seeking compensation for the same amounts from all the occupants at the residential property individually. I accept that the conduct of the occupants at the residential property is unacceptable. However, the Landlord cannot double or triple dip for the same loss from multiple sources. Conceivably, such an approach may lead the Landlord to obtain compensation more than any actual loss, which is problematic. The Landlord can only rightly seek compensation once, for which the other occupants may be jointly and severally liable.

In any event, I find that on the evidence before me the Landlord has failed to prove her claim by quantifying her loss. It is not enough to cite a breach of the *Act* and then seek compensation, the Landlord must, in fact, prove an actual loss. The Landlord has not done so here based on the record before me.

As such, I dismiss the Landlord's claim compensating for damage to the laundry machine, without leave to reapply.

3) *Is the Landlord entitled to retain the security deposit in partial satisfaction of her monetary claims.*

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch. A landlord may not claim against the deposit if the application is made outside of the 15-day window established by s. 38 or their right to do so has been extinguished by ss. 24 or 36.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Forwarding Address and Filing

As noted above, the Tenants provided notice on November 26, 2023, that they would be vacating. The notice provided by the Tenants in their evidence includes their forwarding address. Further, the Landlord acknowledged receipt of the Tenants notice sometime around December 1, 2023, with her evidence showing the advertisement for the rental unit being posted on November 27, 2023.

I find that the Tenants' notice, being left at the Landlord's door, was served in accordance with s. 88 of the *Act*. I further find that the Landlord had receipt of the Tenants' notice either on November 26th or November 27th, since the advertisement was posted on November 27th. In either event, I find it likely the Landlord had the Tenants' forwarding address before the end of the tenancy.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed her application on January 17, 2024.

Doubling of the Deposit and Interest Offset from the Amount Owed by the Tenants

As the parties confirm the tenancy ended on January 1, 2024, I find that the Landlord filed her application beyond the 15-day deadline imposed by s. 38(1) of the *Act*. As the Landlord filed late, I find that this triggers s. 38(6) of the *Act* such that the Tenants are entitled to the doubling of the security deposit, which in this case is \$3,000.00 (\$1,500.00 x 2).

By reference to the deposit interest calculator provided by the Residential Tenancy Branch, I find that interest on the security deposit totals \$50.80, which is calculated as follows:

2022	\$1500.00:	\$0.00 interest owing	(0% rate for 2.74% of year)
2023	\$1500.00:	\$29.27 interest owing	(1.95% rate for 100.00% of year)
2024	\$1528.45:	\$21.54 interest owing	(2.7% rate for 52.19% of year)

I note that this calculation starts upon the date the Landlord received the security deposit as specified in the tenancy agreement to the date of this decision. I do so as this was the entire period in which the security deposit was held by the Landlord in trust for the Tenants.

In total, I order that double the security deposit and interest on the security deposit, totalling \$3,050.80, be offset from the total owed by the Tenants.

4) Is the Landlord entitled to her filing fee?

The Landlord has mixed success, on her application. I find that since she was more than 50% successful on her monetary claims, she is entitled to her filing fee. I order under s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee.

Conclusion

I grant the Landlord \$6,000.00 in compensation for lost rental income.

The Landlord's claim for compensation in relation to the laundry machine is dismissed without leave to reapply.

The security deposit is to be doubled as the Landlord filed her application late. I direct that double the security deposit and interest on the security deposit, totalling \$3,050.80, be held by the Landlord and offset against the amount owed by the Tenants.

I grant the Landlord her \$100.00 filing fee, which is to be paid by the Tenants.

In total, I order that the Tenants pay **\$3,049.20** to the Landlord (\$6,000.00 + \$100.00 - \$3,050.80).

It is the Landlord's obligation to serve the monetary order on the Tenants. Should the Tenants fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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 *Act*.

Dated: July 9, 2024

Residential Tenancy Branch