

DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for damage to the rental unit or common areas
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested

The Tenant applied for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- the return of all or part of the Tenant's security deposit being held without cause
- to recover the filing fee for the application from the landlord

The Tenant acknowledged being served with the landlord's hearing package and evidence in accordance with sections 88 and 89 of the Act. The Landlord acknowledged being served with the Tenant's hearing package and evidence in accordance with sections 88 and 89 of the Act.

Preliminary Matter

The Tenant provided an email address for service on signing the tenancy agreement. The email address for service was handwritten onto the agreement. The Landlord emailed the Tenant frequently but never received a response from the Tenant, so always followed up by text message.

The Landlord emailed the Tenant about various matters throughout and after this tenancy. The Tenant denied receiving any email from the Landlord at any time. The arbitrator discovered that a single letter 'a' was missing from the Tenant's email address the Landlord was using. On review of the tenancy agreement, it was unclear whether an additional 'a' had been added to the email address, or scratched out to not include in the address.

I find that the Landlord made an honest mistake with the Tenant's email address, and reasonably assumed the Tenant was receiving their emails. The Landlord acted reasonably by also following up by text message to ensure the Tenant received the communication.

The Landlord referenced emails to the Tenant in multiple communications, and the Tenant failed to tell the Landlord that they were not receiving the Landlord's emails. This communication error went both ways and was resolved during the hearing, as copies of the Landlord's email communications were provided as evidence to the Tenant for their review.

Issues to be Decided

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

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

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of all or part of the Tenant's security deposit being held without cause?

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

Facts and Analysis

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

This tenancy began on September 22, 2023, with a monthly rent of \$1800.00 due the last day of each month, and with a security deposit of \$900.00.

The Landlord completed a move in condition inspection report with the Tenant on September 17, 2023, and with both parties signing the completed report.

The Landlord completed a move out condition inspection report on January 12, 2024, in the absence of the Tenant. The Landlord claims they gave multiple opportunities to the Tenant to schedule and participate in the condition inspection report, both by email and

text message. The Landlord provided a copy of their independently completed report by email and with their evidence for this application by registered mail.

The Landlord claims \$1800.00 for unpaid rent due January 1, 2024. The Tenant testified that they did not pay rent for the month of January 2024. The Landlord issued a 10 Day Notice for unpaid rent, and the Tenant moved out January 9, 2024, in accordance with the Notice.

The Landlord claims \$27.45 for unpaid utilities. The tenancy agreement states the Tenant is responsible to open an account and pay directly for electricity. The Tenant testified that they closed their BC Hydro account on January 9, 2024, when they moved out of the rental unit. The Landlord testified that they were required to open an account while the property remained vacant for the remainder of January 2024. The Landlord provided the BC hydro bill for January 2024 as evidence to support this claim.

The Landlord claims \$26.15 for three replacement bags of pellets for the heat stove. The tenancy agreement states that the Tenant must leave behind three bags of pellets at the end of the tenancy. The Tenant testified that they did not leave any bags of pellets after vacating the rental unit. The Landlord provided the receipt for purchase of the pellets as evidence to support this claim.

The Landlord claims \$634.28 for cleaning the rental unit after the tenancy. The Landlord testified that the Tenant failed to properly clean the rental unit, including the bathroom, shower, floors, windows, kitchen cupboards and surfaces, and appliances. The Landlord testified that they all disinfected all fixtures and switches, and cleaned and waxed the flooring multiple times, to provide an exceptionally clean rental unit to the new occupant.

The Tenant testified that they partially cleaned the rental unit, but did not complete the cleaning due to a conflict with the Landlord on their move out date. The Landlord claims they cleaned for 16 hours, and charged approximately \$40/hr plus supplies to calculate this claim. The Landlord provided photos of the rental unit taken after the tenancy ended to support this claim.

The Landlord claims \$85.63 for the cost to replace the rental unit keys and mail key. The Tenant claims they left their keys on the counter on the day of move out. The Landlord claims the Tenant failed to return the keys. The Landlord provided a receipt for the cost to replace the rental unit key. The Landlord testified that they have not yet replaced the mail key, but Canada Post told the Landlord it would cost \$75.00 to replace.

The Landlord claims \$105.00 for the cost to clean the pellet stove. The tenancy agreement states the pellet stove must be professionally cleaned annually, and the tenant is responsible for the cost to clean it at the end of the tenancy. The Tenant testified that they only lived in the rental unit for four months so they did not believe they

were required to clean the stove. The Landlord completed the work themselves and calculated the claim total for 2.5 hours of work at \$40/hr.

The Landlord claims \$175.00 for the cost to clean up the exterior of the rental unit. The tenancy agreement states the Tenant is responsible to mow and weed eat the property around the rental unit. The Landlord claims they spent 4 hours raking and 1hr taking yard waste to the dump at \$35/hr. The Tenant testified that it was winter and snowy when they moved out of the rental unit, so they do not believe they are responsible for spring yard clean up that could not have been completed in January.

The Landlord claims \$123.05 for the cost to repair the shower door damaged during the tenancy. The Landlord claims the roller for the shower door was missing at the end of the tenancy, causing the door not to function properly. The Landlord spent three hours finding the part, as the shower is old and the Landlord had to search for the missing part online. The Landlord charges \$35/hr for time spent finding the part, and \$18.05 for the cost of the part itself. The Landlord provided the receipt for purchase of the shower part. The Tenant testified that they had no problem with the shower door during the tenancy and denies damaging the door.

The Landlord claims \$280.00 for general repairs to the rental unit. The Landlord described the damage and provided photos as evidence of small scratches, dings, and burnish marks on the floors, walls, and cupboards. The Landlord is a journeyman painter, and completed the filling, patching, and painting themselves charging \$40/hr for 7 hours of work to reach this total claim. The Tenant claims they did not cause any damage to the rental unit, and the issues described and depicted in the Landlord's evidence are reasonable wear and tear or preexisted the tenancy.

The Landlord claims \$12.00 for the cost to bump their advertisement on Facebook while searching for a new tenant after the Tenant vacated the rental unit. The Landlord re-rented the unit on February 1, 2024.

The Tenant claims \$2884.20 for stolen items taken on the final day of the tenancy, January 9, 2024. The Tenant testified that during their move out, they were taking multiple loads of belongings to a storage unit. The Tenant left the rental unit to drop off the final load, and left behind their guitar, guitar accessories, and passport at the rental unit. When the Tenant returned to the rental unit, these items were missing.

The Tenant claims the Landlord stole these items from the rental unit. The Tenant claims the Landlord was very angry about the unpaid rent, and made comments about the end of tenancy 'getting ugly' over text message. The Tenant believes the Landlord stole these items to get back at the Tenant for not paying rent.

The Tenant contacted the police on January 9, 2024, the attending officer spoke with the Landlord but did not lay any charges or find the stolen items. The Landlord denies taking any personal property of the Tenant's at any time during or after the tenancy. The Tenant provided the original receipt for purchase of the guitar and accessories from

August 2011, and the replacement purchase receipt from February 2024 as evidence to support this claim.

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

Section 26 of the Act says that 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.

Based on the testimony of both parties, I find the Tenant failed to pay the rent due on December 31, 2023, for the month of January 2024. I find the Tenant did not pay the rent arrears at any time after the 10 Day Notice was issued or after the tenancy ended. I find the Tenant did not have a valid reason under the Act to deduct the rent.

For these reasons, I find the Landlord is entitled to a Monetary Order of \$1800.00 for unpaid rent under section 67 of the Act.

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

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Section 7(2) of the Act says a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act says 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, except for reasonable wear and tear.

The Landlord claims \$18.05 for the part required to repair the shower door. Based on the Landlord's evidence and testimony, I find the Landlord has proven on a balance of probabilities that the shower door was damaged during the tenancy, and that this part was required to repair it. Therefore, I find the Tenant breached section 32 of the Act.

The Landlord provided the receipt for the purchased part as evidence of the value of their loss. Therefore, I find the Landlord has proven their claim for \$18.05 for the shower door part replacement.

The Landlord claims \$105.00 for the three hours spent searching for the shower door part. The Landlord testified that if they did not find this part, they may have been required to replace the shower door completely. I find this time spent finding the shower door part is a reasonable step to minimize the Landlord's loss as required under section 7(2) of the Act, and is therefore not recoverable for compensation from the Tenant.

The Landlord claims \$280.00 for general repairs to the rental unit. Based on the evidence and testimony of the Landlord, I find the Landlord has failed to prove the Tenant caused any damage to the rental unit beyond reasonable wear and tear.

The Landlord described and provided evidence of small scratches and dings to the paint on the walls and floors, and a small scratch on one cupboard. I find that these scratches and dings are reasonable wear and tear from living in and use of the rental unit. Therefore, I find the Landlord has failed to prove the Tenant breached the Act and therefore failed to prove their claim of \$280.00 for damage to the rental unit.

For the above reasons, I find the Landlord is entitled to a Monetary Order of \$18.05 for damage to the rental unit, specifically for the replacement shower door part.

The Landlord's other damage claims are dismissed, without leave to reapply.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The tenancy agreement clearly states that electricity is not included in the monthly rent.

Based on the testimony of both parties, I find the Tenant was required to set up a BC Hydro account and pay directly for the electricity for this tenancy. The Tenant testified that they closed their account on January 9, 2024, when they moved out of the rental

unit. The Landlord provided evidence that they set up an account and paid for the electricity for January 10 – January 31, 2024, for a total of \$27.45.

I find, the Tenant breached the Act and tenancy agreement by not paying the utilities due for month of January 2024. I find the Landlord acted reasonably to minimize their loss by only paying for the electricity for the days when the rental unit was not occupied. Therefore, I find the Landlord has proven their claim for \$27.45 for unpaid utilities.

The tenancy agreement clearly states that heat is not included in the monthly rent, and the Tenant is required to leave three bags of pellets for the pellet stove in the rental unit at the end of the tenancy.

Based on the Tenant's testimony, I find the Tenant breached the tenancy agreement by failing to leave three bags of pellets in the rental unit at the end of the tenancy. I find the Landlord proved the value of their loss by providing a receipt for the purchase of pellets. Therefore, I find the Landlord has proven their claim for \$26.15 for the cost of three bags of pellets.

Section 37(2) of the Act says the tenant must leave the rental unit reasonably clean at the end of the tenancy.

Based on the testimony of both parties, and the evidence of the Landlord, I find the Tenant failed to leave the rental unit reasonably clean. I find the Tenant failed to clean the kitchen cupboards and drawers, floors and carpets, and the bathroom and shower to a reasonable standard.

The Landlord claims they spent 16 hours cleaning the rental unit. The Landlord described tasks to clean the rental unit to a reasonable standard, such as vacuuming, cleaning the bathroom and laundry room, removing garbage, and wiping down surfaces. However, I find the Landlord also testified that they cleaned and waxed the flooring multiple times, disinfected all the fixtures and switches in the rental unit, and made mention of the exceptionally clean rental unit provided to the next occupant.

Though the Landlord may take pride in providing a very clean rental unit to the next occupant, the Act only requires the Tenant to bring the rental unit to the standard of reasonably clean under section 37 of the Act. I find the Landlord has claimed compensation for some cleaning work that goes beyond the requirements of the Act.

The Landlord charged \$40 per hour for their work plus the cost of supplies to reach a total of \$634.28. The Landlord claims that a professional cleaner would charge \$45 per hour or more, but did not provide any evidence of the prospective cost for a cleaning company to clean the rental unit instead. The Landlord did not provide any receipts for cleaning supplies, or any evidence of lost wages. For these reasons, I find the Landlord has failed to prove the value of their loss.

Tenancy policy guideline 16 says that where the value of a loss is not sufficiently proven, but it is found that a breach has occurred, the arbitrator may award nominal damages.

I find the Landlord failed to prove their loss of \$634.28, however I find that the Tenant breached section 37 of the Act by not cleaning the rental unit to a reasonable standard. Therefore, I award the Landlord nominal damages of \$300.00 for cleaning the rental unit.

The Landlord claims \$105.00, calculated at \$40 per hour for 2.5 hours of work, to clean the pellet stove in the rental unit. I find the tenancy agreement addendum notes that the pellet stove must be cleaned annually. The tenancy agreement also notes that the Tenant must agree to professional cleaning of the stove at the end of the tenancy. Therefore, I find the tenancy agreement is unclear in its requirements for a short-term tenancy lasting less than one year.

I find it likely on a balance of probabilities that the pellet stove must be cleaned professionally on an annual basis, as stated by the Landlord in testimony and in the tenancy agreement addendum. As this tenancy only last four months, from September to early January, I do not find it reasonable for the Tenant to be charged for the cost to clean the pellet stove.

I further find that the addendum states the stove must be professionally cleaned, but does not denote a specific value that the Tenant must agree to pay. As the Landlord did not hire a professional cleaner to complete this work, and did not provide any evidence of the cost for the stove cleaning by a professional, I find the Landlord has failed to prove the value of their loss. For these reasons, I find the Landlord has failed to prove their claim for \$105.00 to clean the pellet stove.

The Landlord claims \$175.00 for the cost to clean the exterior of the rental unit, which includes four hours of raking at \$35.00 per hour, and the cost to remove the yard waste and take it to the dump. I find the tenancy agreement addendum says the tenant must mow the lawn and weed eat around the property. There is no mention of raking leaves or any other exterior maintenance as claimed by the Landlord.

I further find that the Tenant moved out of the rental unit in January 2024. I find on a balance of probabilities that mowing, weed eating, or other exterior maintenance cannot be completed during the winter when there is snow on the ground.

For these reasons, I find the Landlord has failed to prove that the Tenant breached the tenancy agreement and has therefore failed to prove their claim of \$175.00 for exterior clean up.

Section 25(1) of the Act says a landlord must re-key or alter the locks of the rental unit and pay all costs associated with the changes.

Based on the Landlord's testimony, the Landlord purchased a new deadbolt and new keys for the rental unit at the end of the tenancy due to the Tenant's failure to return the keys. The Landlord claimed \$10.63 for the new keys. I find this is the Landlord's responsibility under section 25 of the Act. Therefore, I find the Landlord has failed to prove their claim of \$10.63 for replacement keys to the rental unit.

The Landlord claims \$75.00 for the cost to replace the mail key. The Landlord did not provide any documentary evidence of the cost for this replacement. The Landlord testified that they have not yet purchased a new mail key, but they plan to in future. Therefore, I find the Landlord has failed to prove the value of their loss and their claim for \$75.00 for a replacement mail key.

Section 7(2) of the Act says a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord claims \$12.00 for the cost to bump up the facebook advertisement for the rental unit after the tenancy ended. I find the Landlord did not provide any documentary evidence to prove the cost of this ad bump. I further find that this ad bump is a reasonable step to minimize the Landlord's loss of rental income and to re-rent the rental unit as soon as possible, as required under section 7(2) of the Act. Therefore, I find the Landlord has failed to prove their claim of \$12.00 for the cost to bump the facebook ad.

For the above reasons, I find the Landlord is entitled to a Monetary Order of \$53.60 under section 67 of the Act, and nominal damages of \$300.00 for cleaning the rental unit.

The Landlord's other claims for damage or loss under the Act, Regulation, or tenancy agreement are dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The Tenant claims \$2884.20 for stolen items taken on the final day of the tenancy, January 9, 2024. Based on the evidence and testimony of both parties, I find the Tenant has failed to prove on a balance of probabilities that the Landlord took these items, or breached any section of the Act, Regulation, or tenancy agreement.

The Tenant did not provide sufficient evidence to prove on a balance of probabilities that the Landlord is responsible for these lost or stolen items. There is no evidence of a police report or investigation finding the Landlord responsible. There is no evidence of the Landlord threatening to steal from the Tenant or admitting to taking these items. There is no photo or video evidence of the theft.

For these reasons, the Tenant's claim for a Monetary Order of \$2884.20 under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of all or part of the Tenant's security deposit being held without cause?

Section 38 of the Act states that within 15 days of the date that the landlord receives the tenant's forwarding address in writing, a landlord must make an application for dispute resolution to claim against the tenant's security deposit.

Section 88 of the Act sets out the ways in which a party can give or serve records, including a forwarding address in writing.

Based on the evidence and testimony of both parties, I find the Tenant has not provided their forwarding address to the Landlord in writing in any way allowed by the Act or regulations. The Tenant testified that they texted the Landlord their forwarding address on January 21, 2024, but I find this is not a valid method of service under the Act.

Therefore, I find the Landlord made their application to claim against the Tenant's security deposit within the time allowed by the Act, as the Tenant's forwarding address was not effectively provided under section 88 of the Act.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$900.00, plus interest, in partial satisfaction of the monetary awards granted.

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

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I find the Landlord is entitled to a Monetary Order of **\$2171.65** under section 67 of the Act. I Order the Landlord to retain the Tenant's security deposit of \$900.00, plus interest, in partial satisfaction of this award. I Order the Tenant to pay the balance due of **\$1253.50**.

The Landlord must serve this Order to the Tenant as soon as possible. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Unpaid rent – January 2024	\$1800.00
Damage to rental unit under section 67 of the Act	\$18.05
Compensation for damage or loss under section 67 of the Act	\$53.60
Nominal damages for cleaning of rental unit	\$300.00
Security Deposit with Interest	- \$918.15
Total Amount	\$1253.50

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 3, 2024

Residential Tenancy Branch