

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Landlord's Application for Dispute Resolution, filed on June 10, 2024, is for:

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

The Tenant's Application for Dispute Resolution, filed on July 9, 2024, is for

- A monetary order for a return of a Tenant's security deposit pursuant to section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Agent H.S. and P.S. attended the hearing for the Landlord

Tenant S.C., Agent S.B. attended the hearing for the Tenant

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence, and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

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Issues to be Decided

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 Landlord or the Tenant entitled to retain all or a portion of the Tenant's security and/or pet damage deposit?

Is either party entitled to recover the filing fee for this application?

Background and Evidence

Evidence was provided showing that this tenancy began on September 1, 2023, with a monthly rent of \$2,100.00, due on the first of the month, with a security deposit in the amount of \$1,050.00. The tenancy agreement was a fixed term ending on August 31, 2024.

The tenancy agreement included an addendum which the Tenants signed. The Addendum at paragraph 10 authorizes the Landlord to charge the Tenant a \$500.00 administration fee if the Tenant breaks the lease. This clause states the administration fee is not a penalty and is an agreed pre-estimate of the Landlord's costs arising as a result of the early termination.

H.S. testified that he read this term aloud and underlined a portion of it when the Tenant signed the agreement. The Landlord provided a copy of the tenancy agreement.

The Tenant testified that he had issues with the heat in the rental unit during the tenancy, and their vehicle was broken into. The Tenant also notified the Landlord on multiple occasions that the garbage room, where the building occupants were to dispose their garbage, was unsanitary and was often overfilled. The Tenant testified that the Landlord did not take appropriate action to address the break-in and the conditions in the garbage room.

P.S. testified that the Landlord addressed the heating issue by having a technician repair the baseboard heaters. However, because the rental unit is in a building that has a strata council, the Landlord was not able to take measures to address the vehicle break in or the garbage room.

The Tenant requested that the tenancy agreement end early, starting in November 2023. The Tenant testified that the Landlord agreed that the Tenant could vacate the

rental unit early and did not mention the administrative fee that would be retained from their security deposit. On March 26, 2024, the Tenant provided the Landlord notice that they would be ending the tenancy on May 16, 2024. The Tenant testified that they believed they had given the Landlord the required one month notice to end tenancy. The Tenant vacated the rental unit on May 16, 2024.

The Tenant supplied emails that the Tenant sent to the Landlord confirming their understanding that the tenancy could end early.

The Landlord re-rented the rental unit on June 1, 2024. P.S. testified that he completed showing and reference checks, as well as contacting interested parties to re-rent the unit. P.S. estimated he spent about 7 or 8 hours working to re-rent the rental unit. P.S. testified that the \$500.00 administration fee is a genuine pre-estimate of the cost to re-rent the unit as it is difficult to know exactly how much work it will take to find new tenants.

P.S. testified that Landlord returned \$550.00 of the Tenant's security deposit to the Tenants on May 16, 2024.

The Landlord's application requests that they be authorized to retain the \$500.00 remainder of the Tenant's security deposit in accordance with paragraph 10 of the tenancy agreement.

The Tenant argued that the Landlord should have to return the \$500.00 that the Landlord's kept, \$16.29 in interest, as well as \$1,050.00 to double the security deposit under section 38(6) of the Act.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim

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

To be awarded compensation for a breach of the Act, the Landlord must prove:

- 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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The first issue that must be determined is whether the Tenants breached Act, regulation or tenancy agreement. This tenancy is a fixed term tenancy agreement. Residential Tenancy Branch Policy Guideline 30 explains that during the fixed term neither the Landlord nor the Tenant may end the tenancy except for cause, by agreement of both parties, or if early termination is required due to Family or Household Violence or Long-Term Care.

I find that the Tenant have failed to prove that they had cause to end the fixed term tenancy. The issues that the Tenants complained of were either fixed in a reasonable time by the Landlord or were outside the control of the Landlord.

On a balance of probabilities, in consideration of the documents the parties submitted and their testimonies, I find that the Tenant has not proven that the Landlord agreed in writing to end the fixed term tenancy. The e-mails that the Tenant supplied show that the Tenant understood that they were authorized to end the tenancy early, but the Landlord did not confirm this understanding in writing.

I find that on May 16, 2024, the Tenant ended the tenancy that was scheduled to end on August 31, 2024. The Tenant breached section 45 of the Act by giving notice to end the tenancy on a date that is earlier than the date specified in the tenancy agreement as the end of the tenancy.

Having established that the Tenant breached the Act, the Landlord must establish that they suffered a loss, as a result of the breach, and establish the value of that loss.

Residential Tenancy Policy Guideline 4 states that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. This tenancy agreement at paragraph 10, entitled the Landlord to \$500.00 as an administrative penalty. I find that paragraph 10 is a liquidated damages clause.

In this case, the liquidated damages clause is intended to compensate the Landlord for losses resulting from the costs of re-renting a unit after the Tenant's breach of the tenancy agreement. Throughout the lifetime of a rental property, the Landlord must engage in the process of re-renting the rental unit numerous times. However, one important reason why the Landlord entered into this fixed term tenancy agreement is to attempt to limit the number of times the Landlord must incur this cost.

I find it more likely than not that, because the fixed term tenancy agreement was breached by ending the tenancy early, the Landlord incurred costs of re-renting earlier than it would have been prior to the breach.

The next question is whether \$500.00 is a genuine pre-estimate of that loss. P.S. stated that the administrative penalty is meant to cover costs of the rental advertisement and to show the unit to potential new tenants. The Tenants agreed to this pre-estimate in the tenancy agreement. Considering these factors, I am satisfied on a balance of

probabilities that the Landlord established that the administrative penalty was a genuine pre-estimate of the costs associated with re-renting the unit. I find the Landlord is entitled to the monetary award against the Tenant in the amount of \$500.00.

I find that the Landlord acted reasonably to minimize their loss as well, as evidenced by their re-renting the rental unit soon after the Tenants vacated, and not claiming for loss of rental income as a result.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$500.00

Is the Landlord or the Tenant entitled to retain all or a portion of the Tenant's security and/or pet damage deposit?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was provided on June 12, 2024, and the Landlord made their application on June 13, 2024, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

Section 38(6) of the Act states that if the Landlord does not return the deposit with interest or file a claim against the Tenant within fifteen days, the Landlord must pay the Tenant double the amount of the deposit.

Based on the evidence before me, I find the Landlord was deemed served with the Tenants' forwarding address on May 27, 2024, by which time the Landlord had already returned a portion of the Tenant's security deposit. The Landlord made this application on June 9, 2024, which is within the 15 day time limit.

Section 72(2)(b) of the Act states that if there is an amount owing from the Tenant to the Landlord, an arbitrator may deduct that amount from a security or pet deposit due to the Tenant.

I find that interest of \$16.29 accrued on the security during the tenancy.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security and pet damage deposits of \$1,016.29, plus interest, in partial satisfaction of the monetary award.

Is either party entitled to recover the filing fee for this application

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$83.71** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$500.00
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$516.29
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$83.71

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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: September 20, 2024

Residential Tenancy Branch