



## **DECISION**

### **Introduction**

This hearing dealt with Cross Applications including:

The Tenant's August 29, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act

The Landlord's October 4, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid rent under section 67 of the Act
- 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 November 7, 2024, teleconference hearing was attended by the Landlord, who provided sworn testimony and referred to evidence. The Tenant did not attend and was not represented.

### **Service of Notice and Evidence**

The Landlord referred to evidence of their written tenancy agreement signed by the Tenant on February 27, 2024, which includes the Tenant's email address. They also referred to an Order for Substituted Service that was provided by the RTB on October 8, 2024, with a requirement that the Landlord provide proof of service by email to the RTB.

The Landlord referred to their proof of service by email to the Tenant on October 9, 2024, which included Notice of the Dispute and copies of all evidence for this dispute. The Landlord also submitted a signed RTB-55 to confirm service by email.

The Landlord stated that they did not hear back from the Tenant after service by email, and so the Landlord physically attended to the location of a UPS store the Tenant had

self-identified in their application to the RTB on August 29, as their current address for service.

The Landlord submitted a second signed RTB-55 Proof of Service document that was signed by the staff of the UPS store to confirm that a second Notice package, including copies of all relevant evidence, was left in the Tenant's mailbox on October 12, 2024.

I find that the Landlord has served the Tenant with both Notice and Evidence of their claim as required by the Act, regulations, and rules of procedure because I find that:

- The Landlord served to a mailbox provided for service.
- The Landlord also received an Order for Substituted Service allowed them to serve to email, which they did.

## **Preliminary Matters**

The Tenant did not attend the teleconference and so I dismissed their application under RTB rule of procedure 7.3. I do not give leave to reapply.

## **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 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**

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

The residential property is a multi- unit condo building. The Landlord has owned their rental unit, a one bedroom, one bathroom unit, that they rent as a "furnished unit" since 2023.

They provided evidence of a signed fixed tenancy agreement that was to run from April 1, 2024, to March 31, 2024. However, the Landlord testified that they took back possession of the rental unit on September 17, 2024, after receiving an Order of Possession from the RTB on September 5, 2024, due to the Tenant's non-payment of rent.

Monthly rent was \$4,000.00 and a \$2,000.00 security deposit was collected.

The Landlord testified that they received Notice from the Strata for the residential property in the summer informing the Landlord that the Tenant was using the rental unit for Airbnb.

The Landlord testified that they contacted the Tenant who denied this.

The Landlord also testified that they repeatedly tried to work with the Tenant and referred to their proof of email exchanges with the Tenant, provided as evidence for this dispute.

The Landlord testified that they knocked on the door of the rental unit one day in August and it was answered by an AirBnB guest. They also testified that on another occasion they attended to the rental unit for the purpose of posting a 24 Hour of entry and found the door to the unit ajar.

The Landlord testified that each time they accessed the unit, which was rented as fully furnished, it never showed any signs of the Tenant living in the rental unit, which would typically be seen in the form of personal clothes or belongings in the unit.

The Landlord stated that they are claiming compensation for rent for September 2024 because it was not paid by the Tenant, and the Landlord was only able to secure a new tenant from October 16, 2024. The Landlord stated that they still have not been paid by the Tenant for August, despite the \$4,000.00 monetary order from the RTB dated September 4, 2024.

The Landlord referred to their Monetary Order worksheet dated October 4, 2024, to explain their claim for compensation for damages in the amount of \$999.88, including:

- Cost of registered mailing: \$14.63 and \$12.23
- Costs of new electronic door lock \$417.41
- Costs of replacement key copies \$17.92
- Cleaning \$240.00
- Replacement power cord for lamp \$15.67
- Replacement sound bar remote \$13.40
- Replacement wine glasses \$43.62
- Replacement Building Fobs and parkade pass from Strata \$225.00

The Landlord referred to evidence of a Move-In Condition Inspection report and argued that the Tenant abandoned the rental unit at the end of August 2024 because the building manager indicated that the Fobs given to the Tenant as part of this tenancy, were last used on August 30, 2024, when the final AirBnB guest checked out.

The Landlord referred to proof of an invoice for replacement of the door lock and testified that they chose to minimize losses by purchasing a replacement lock after discussions with a specialized locksmith who indicated it would cost more just to have the lock reprogrammed than it would to simply install a new lock.

The Landlord testified that the original electronic lock was installed in 2023 after the Landlord bought the rental unit.

The Landlord referred to an invoice for keys to get copied so that they could have the same number of keys for operating this rental unit as they did when this tenancy that is the subject of this dispute, started April 1, 2024.

The Landlord referred to an invoice in the amount of \$240.00 to have the unit cleaned. The Landlord testified that they repeatedly reminded the Tenant that they needed the unit to be clean at the end of the tenancy.

The Landlord referred to the text of their move-in condition inspection report, and their pictures of the desk lamp and the remote for the soundbar, to confirm that these items existed at the start of the tenancy. The Landlord also referred to photo of a missing wine glass as well as a photo of a chipped wine glass.

The Landlord referred to receipts for replacing all items and reiterated that these items needed to be replaced because they rental unit was rented as a furnished unit, as shown in the text of the written tenancy agreement.

The Landlord referred to proof of strata documentation to support their charge for \$225.00 for replacement of 2 Building Fobs and a parkade pass because the Tenant did not return any of these items to the Landlord.

The Landlord reiterated that the Tenant abandoned the unit and testified that they only became aware of the Tenant's new address when the Tenant served Notice to the Landlord of the Tenant's dispute application dated August 29, 2024.

## **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 as required by RTB Rule of Procedure 6.6.

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

Tenants must pay rent when rent is due under section 26 of the Act.

Because the Tenant in this dispute signed a term tenancy agreement that was to run April 2024 and March 2025, the Landlord reasonably expected to receive rent in full through payment of \$4,000.00 each month.

But rent stopped being paid as required, and so the Landlord issued a 10-Day Notice for Unpaid rent in August 2024, and then applied to the RTB for an Order of Possession

after rent remained unpaid. This Order of Possession was granted September 4, 2024, and the Landlord regained possession of the unit on September 17, 2024.

In accordance with RTB Policy Guideline 3, I find that the Landlord is entitled to an award of \$4,000.00 for rent that was owed and not paid for September 2024, to make the Landlord as whole as possible regarding expectations for payment of rent through this tenancy.

I grant the Landlord a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$4,000.00.

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that 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.

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

This four-point test is set out within RTB Policy Guideline 16.

Regarding the Landlord's claim, I find that they successfully establish on the balance of probabilities that they are entitled to compensation because:

- 1) Section 37(2) of the Act requires tenants to:
  - a. Leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - b. give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
- 2) The Tenant did not return the keys associated with the electronic lock at the door or the unit, mailbox keys, Building Fobs, or the parkade access to the Landlord – the Landlord clearly identified each of these items on the copy of the Move-In condition inspection report that was provided. I find that they also repeatedly emphasized the need to return these items in their emails with the Tenant.

- 3) I find that the Landlord reasonably incurred costs of \$417.41 for purchasing a replacement lock for the entry door to the unit, and I am satisfied that the Landlord incurred these costs because a receipt was provided.
- 4) I also find that the Landlord reasonably incurred costs of \$17.92 for copying keys as shown in the invoice, as well as the costs of \$225.00 for replacement of the access FOBS to the residential property as well as the parkade access pass.
- 5) I find that the Landlord reasonably incurred costs of \$240.00 for professional cleaning of the rental unit after it was abandoned by the Tenant.
- 6) I find that the Landlord reasonably incurred replacement costs of \$15.67, \$13.40, and \$43.62 to replace assorted small items within the furnished rental unit that were found to be missing and or damaged at the end of the tenancy and that receipts were provided.
- 7) I decline to award compensation for registered mailing as requested because I find that registered mailing costs are a cost of being a landlord.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is successful and I will provide a monetary order in the amount of \$973.02.

$$\$417.41 + \$17.92 + \$225.00 + \$240.00 + \$15.67 + \$13.40 + \$43.62 = \$973.02$$

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

The Landlord is requesting to retain the Tenant's \$2000.00 as compensation for money owed.

Regarding the 15-day deadline of seen in 38(1) of the Act for the Landlord to apply to the RTB to retain the security deposit within either 15 days of the tenancy ending, or the Tenant providing their forwarding address, I find that the Landlord satisfied their obligation because October 4, 2024 (the date of the application) is within 15 days of the tenancy ending on September 17, 2024, once dates are counted as required by section 25 of the Interpretation Act.

I therefore order under 38(3) and 38(4) of the Act that the Landlord is entitled to retain the full value of the Tenant's \$2,000.00 as partial satisfaction of the \$4,000.00 monetary award for rent that provided to the Landlord in this Decision.

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

The Landlord was successful in this application. They are authorized to recover the recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

The Tenant's application is dismissed for failure to attend, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$3,073.02** under the following terms:

Monetary Issue	Granted Amount
Award for Rent	\$4,000.00
Award for damages	\$973.02
Authorization to recover filing fee	\$100.00
Minus value of security deposit	-\$2,000.00
<b>Total Amount</b>	<b>\$3,073.02</b>

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) if equal to or less than \$35,000.00.

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: November 8, 2024

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Residential Tenancy Branch