



DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Landlord's application for:

- a Monetary Order of \$4,050.00 for unpaid rent under section 67 of the Act
- a Monetary Order of \$257.50 for damage to the rental unit or common areas under sections 32 and 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

And the Tenant's application for:

- a Monetary Order of \$7,656.00 for monetary loss or money owed
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters

As both parties confirmed service of the Proceeding Packages and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

The parties presented testimony, submissions and documentary evidence with respect to the Landlord's application for dispute resolution. As the hearing did not complete within the scheduled time, I adjourned the hearing for the Tenant's application for dispute resolution.

Issues to be decided

Is the Landlord entitled to a Monetary Order for unpaid rent, or for compensation for loss or damage under section 67 of the Act?

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 rental unit was a basement suite in a house (the House). Both parties agreed that this tenancy began on September 1, 2023, and ended on August 15, 2024. The Tenancy Agreement (TA) was submitted in evidence. The fixed term tenancy ended on January 1, 2024, and thereafter the tenancy continued on a month-to-month basis until August 15, 2024. The monthly rent of \$2,700.00 was due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,350.00.

On July 31, 2024, the Tenant attempted to end the tenancy by way of Mutual Agreement to End Tenancy (Mutual Agreement). The Landlord did not accept or sign the Mutual Agreement. On July 31, 2024, later in the day, the Tenant provided via email to the Landlord their notice to end the tenancy (Tenant Notice), with the effective date of August 15, 2024. On July 31, 2024, the Tenant agreed in writing for the Landlord to keep the security deposit of \$1,050.00 for rent due from August 1, 2024 to August 15.

The Landlord is seeking a monetary order as follows:

Item 1 - \$1,350.00, unpaid rent from August 16, 2024 to August 31. Item 2 - \$2,700.00, loss of rent for September 2024. The Landlord testified that the Tenant did not provide proper notice to end tenancy and, after accepting the security deposit of \$1,350.00, they are seeking the remainder of \$1,350.00 for rent owed in August 2024. The Landlord testified that they took immediate steps to re-rent the rental unit, via advertisement on Facebook and Craigslist. The Landlord testified that they secured a new tenancy, with the effective date of October 1, 2024, at monthly rent of \$2,600.00. The signed tenancy agreement, with the effective date of October 1, 2024, was submitted in evidence.

Tenant AK testified that at the end of January 2024, new tenants (Upstairs Tenants) occupied the upstairs level of the House. AK testified that the Upstairs Tenants were loud, constantly running and jumping, and disrupting their sleep and rest throughout the day. AK testified that they ended their tenancy due to this breach of material term. AK testified that their quiet enjoyment was impacted and they informed the Landlord of this issue. AK testified that on August 2, 2024, they provided a warning letter (Breach

Notice) to the Landlord, and for the Landlord to rectify the problem no later than August 14, 2024, otherwise the Tenant has the right to end their tenancy. The warning letter was submitted in evidence.

Item 3 - \$257.50, for plumbing repairs. The Landlord clarified that they are seeking \$157.50 for plumbing repairs and \$100.00 for the cost of the filing fee. The claim for the filing fee is a duplicate claim that I will address later in this decision. As such, this \$100.00 claim for the filing fee is dismissed without leave to reapply.

Support Person NB for the Landlord testified that during the August 2024 long weekend they learned of a plumbing issue at the House, and the pump sump was clogged with grease. NB stated that they tried to manually run the sump pump to fix the problem. NB testified that there was a subsequent issue with the sump pump and on August 7, 2024, they called a plumber for this issue. The plumber informed the Landlord that the occupants of the basement suite are dumping grease down the kitchen drain. The Landlord submitted text message communication from their plumber, a photograph and the plumbing invoice of \$157.50 as part of their documentary evidence.

AK testified that there were previous incidents of a clogged drain since the Upstairs Tenants moved in, however, they do not recall dates of these incidents or if the Landlord sent a plumber to address the issue. AK stated that the issue resolved after a few days in the past. AK testified that they collected and disposed of grease separately and did not pour it in the kitchen sink. AK relied on their Expert Report dated August 20, 2024, submitted as part of their documentary evidence

Analysis

Is the Landlord entitled to a Monetary Order for unpaid rent, and for compensation for loss or damage under section 67 of the Act?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

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 unpaid rent owing in the amount of \$1,350.00 for August 2024.

In this case, the Tenancy Agreement requires the Tenant to pay monthly rent on the first day of each month. The Tenant did not provide a one month notice to end tenancy, as required by section 45(1) of the Act, which states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the Tenant did not provide notice as per section 45 (1) of the Act, I find they must pay full rent for August 2024, and the amount owing is \$1,350.00 after the parties agreed for the Landlord to keep the security deposit of \$1,350.00 as payment towards August 2024 rent requirements.

I find the Tenant is subsequently relying on the Landlord's breach of section 45(3) of the Act, which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I reject the Tenant's argument that they were entitled to end the tenancy early in accordance with section 45(3) of the Act, because the Tenant had already given their notice to vacate prior to giving the Landlord the Breach Notice. By that time, the Landlord understood the tenancy was ending on August 15, 2024. For that reason, they were therefore not entitled to use section 45(3) of the Act to end the tenancy.

As per the Tenant Notice, the Tenant's obligation for payment of rent was up to and including August 2024. As such, I decline to award the Landlord the amount of \$2,700.00 for September 2024.

I award the Landlord the cost of plumbing repairs in the amount of \$157.50. I find the Landlord's documentary evidence proves the Tenant was responsible for the damage, as confirmed by the Landlord's plumber. I find the Landlord took immediate steps to fix the issue and provided an invoice to support their claim. Section 32 of the Act states a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant. In this case, I find the damage or loss occurred due to the Tenant's actions, as supported by the Landlord's documentary evidence.

Although the Tenant testified that they experienced issues with a clogged drain in the past, and they notified the Landlord of the same, I find their testimony was vague and lacking details to support such a claim. Instead, I accept NB's testimony that as soon as they first learned of this issue they attempted to manually solve the issue and then relied on plumbing services. I place minimal weight on the Expert Report, which provided information on the water flow and faucet.

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 unpaid rent, and for compensation for loss under the Act, in the amount of \$1,507.50.

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

Both parties testified that the issue of security deposit is resolved, with an agreement for the Landlord to retain the security deposit of \$1,350.00 for rent due on August 1, 2024.

Section 38(4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

Based on the evidence before me, the Tenants agreed to and surrendered their security deposit of \$1,350.00 to the Landlord on July 31, 2024.

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

As the Landlord was successful in their application, I grant the Landlord 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 **\$1,607.50** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent and for compensation for loss or damage under section 67 of the Act?	\$1,507.50
To recover the filing fee for this application from the Tenant under section 72 of the Act.	\$100.00
Total Amount	\$1,607.50

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** to be enforceable. Should the Tenant fail to comply with this Order, this Order may be filed in the Provincial Court of British Columbia (Small Claims Court).

I adjourned the hearing to proceed on the Tenant's application for dispute resolution. The hearing will be reconvened at a future date.

- I order this hearing will be reconvened in accordance with the Notice of Hearing documents attached to this Interim Decision;
- I order that this is not an opportunity for either party to amend the existing application for dispute resolution;
- I order that this is not an opportunity for either party to submit an additional application for dispute resolution to be crossed or joined with the application for dispute resolution currently before me;
- I order that this is not an opportunity for either party to submit additional evidence.

The next hearing date for the Tenant's application is February 6, 2025, at 1:00 PM.

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 1, 2024

Residential Tenancy Branch