

DECISION

Introduction

This hearing dealt with an application filed by both the Tenant and the Landlord pursuant to the Residential Tenancy Act (the “Act”):

The Landlord applied for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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 Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The hearing began on May 13, 2024. ZH attended the hearing as agent for the Landlord with MZ attending as their interpreter. Tenant YL attended the hearing with RJ attending as their advocate.

The hearing was adjourned to a later date and an Interim Decision was issued on May 22, 2024, in which the hearing was adjourned to a date and time set by the Residential Tenancy Branch (RTB). This Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

The hearing reconvened on July 15, 2024, and September 26, 2024, respectively. ZH attended these hearings as agent for the Landlord with LS attending as their interpreter. Tenant YL attended the hearing with RJ attending as their advocate. Interim decisions were rendered on July 15, 2024, and September 26, 2024, respectively. These Interim Decisions are incorporated by reference and should be read in conjunction with this Decision.

The hearing reconvened on November 7, 2024. ZH attended the hearing as agent for the Landlord with LS attending as their interpreter. Tenant YL attended the hearing with RJ attending as their advocate.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

As determined in the Interim Decision dated May 22, 2024 (the May Decision), I find that the Tenant was served with the Landlord's Notice of Dispute Resolution Proceeding document based on section 71(1) of the Act. However, as further determined in the May Decision, the Landlord's evidence in support of their application, which was not served to the Tenant in accordance with the Act or Rules of Procedure, is excluded from my consideration when rendering a decision in this matter.

In the May Decision, I ordered the Tenant to re-serve the Landlord with their Proceeding Package by email. The Tenant submitted copies of the emails sent to the Landlord which contained their Proceeding Package as attachments into evidence to support this service. At the reconvened hearing on July 15, 2024, the Landlord acknowledged receipt of the Tenant's Proceeding Package. On that basis, I find that the Landlord was sufficiently served with the Tenant's Proceeding Package based on section 71 of the Act.

Also in the May Decision, I afforded the Landlord an opportunity to serve the Tenant with evidence in response to the Tenant's application. However, the Landlord was cautioned that they were not permitted to include evidence in support of their own application in response to the Tenant's application.

At the reconvened hearing on July 15, 2024, ZH testified that they served the Tenant with evidence in response to the Tenant's application. RJ acknowledged receipt of the evidence but took issue with the contents stating that they believe that some of the evidence is in support of the Landlord's application and not the Tenant's.

I have reviewed the Landlord's evidence which was uploaded to the Tenant's application Residential Tenancy Branch file, and I find in favour of the Tenant, that although the Landlord submitted some evidence in response to the Tenant's application, they also served and submitted almost exact duplicates of evidence in support of the Landlord's application which has previously been excluded from my consideration. For this reason, I find it would not be procedurally fair to the Tenant to consider this evidence. On that basis, I have excluded this evidence from my consideration when rendering a decision in this matter.

Issues to be Decided

Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested or is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

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

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

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

Is either the Landlord or Tenant entitled to recover the filing fee for this application from the other party?

Background and Evidence

I have reviewed all evidence that has not been previously excluded from my consideration as well as the testimony of the parties but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 28, 2022. RJ testified that the tenancy ended on December 27, 2023. RJ submitted that the Tenant provided the Landlord with written notice on November 17, 2023, informing the Landlord that they would be ending the tenancy on December 27, 2023. RJ testified that the Tenant vacated the rental unit on December 27, 2023.

ZH testified that their position is that the tenancy ended on February 27, 2024, because the Tenant did not return the keys or remove all of their personal belongings from the rental unit.

The parties agree that monthly rent from July 28, 2022, until June 28, 2023, was \$2,400.00. ZH testified that the parties mutually agreed to increase the rent to \$3,000.00 a month beginning July 28, 2023. RJ disagreed that the parties mutually agreed to the rent increase but conceded that the Tenant began paying \$3,000.00 monthly on July 28, 2023. The parties agreed that rent was due on the 28th of the month for the period from the 28th to the 27th of the following month.

The parties agree that the Landlord collected a security deposit in the amount of \$1,200.00 which the Landlord continues to hold.

Both parties made applications regarding the security deposit. For that reason, the parties were asked a series of questions. Their responses are set out below.

Both parties agreed that no move-in condition inspection report was completed by the Landlord or provided to the Tenant.

ZH testified that they did not complete a move-out condition inspection report with the Tenant, because the Tenant advised them that they lost the key. ZH testified that they inspected the rental property without the Tenant present after they made a new key.

RJ agreed that no move-out condition inspection report was completed; however, the Tenant walked through the rental unit with a friend of the Landlord on December 27, 2024. RJ testified that the Tenant was not given more than one opportunity to complete the move-out condition inspection.

ZH acknowledged receipt of the Tenant's forwarding address by email on January 6, 2024. The Landlord filed their application claiming against the security deposit on February 14, 2024.

Landlord's Application - Unpaid Rent

The Landlord is seeking a Monetary Order for unpaid rent. During the hearing, ZH indicated that the Landlord made their application for unpaid rent in two parts and noted that as more time has elapsed since the application was filed, they are in fact seeking a total of \$6,000.00. ZH testified that it is the position of the Landlord that the Tenant owes them rent for the period of December 28, 2023 to January 27, 2024 and January 28, 2024 to February 27, 2024.

ZH testified that the Tenant's personal belonging remained in the rental unit for 60 days and because of this, they were unable to take possession of the rental unit and rent it to another tenant.

RJ testified that the Tenant provided the Landlord with written notice to end their tenancy by pre-agreed email on November 17, 2023, advising the Landlord that they would be ending the tenancy on December 27, 2023. RJ conceded that the Tenant left items at the rental property but submitted that the items were abandoned, of little value and could have been removed and disposed of by the Landlord. RJ testified that the Tenant has not lived at or entered the rental unit since December 27, 2023, and disputes that they owe any unpaid rent to the Landlord.

Replacement Key Fobs and Lock

The Landlord is seeking compensation in the amount of \$283.50 in relation to hiring a locksmith to attend the property to open the rental unit and mailbox and replace the lock and keys as well as \$200.00 for the costs associated with replacing two key fobs.

RJ testified that the Tenant concedes that they misplaced the keys and accepts that they owe the Landlords the cost of the replacement lock and key fobs.

Strata Penalty

The Landlord is seeking \$150.00 to cover the cost of a strata penalty issued during the tenancy. ZH testified that the Landlord paid this fine to strata council. ZH testified that the Tenant was provided with a Form K by the Landlord but failed to sign or return it.

RJ testified that the Tenant was aware of the strata penalties and wished to dispute them with the strata council, but ZH refused to allow them to. RJ testified that they do not believe the Tenant signed or received the Form K.

Damages to the Rental Unit

The Landlord is seeking a Monetary Order in the amount of \$800.00 for damage to the rental unit or common areas. ZH testified that the Tenant left damage in the rental unit including damage to the door jam of the master bedroom, a hole in the wall of the living room and bedroom and bump in the floor in the kitchen area. The Landlord testified that they have not repaired any of this damage. The Landlord testified that they estimate the cost of the repairs at \$800.00 based on conversations between their broker and various tradespeople.

RJ testified that the Landlord did not complete a move-in condition inspection report as required by the Act to document the condition of the rental unit at the outset of the tenancy. RJ testified that they believe the damages referred to by the Landlord are the result of normal wear and tear. RJ testified that the damage to the wall was present at the outset of the tenancy. RJ submitted that the Tenant disputes they caused any damage to the rental unit that goes beyond normal wear and tear.

Tenant's Application – Overpayment of Rent

The Tenant is seeking a Monetary Order in the amount of \$3,000.00 in relation to the overpayment of rent during the tenancy. RJ testified that the Tenant was manipulated by ZH into paying an additional \$600.00 in rent for a period of five months from July 28, 2023 to the end of the tenancy in December. RJ testified that the Tenant signed a fixed year tenancy agreement on July 20, 2022. The tenancy agreement is submitted into evidence and indicates that the period of the fixed term ends on July 27, 2023, at which time the tenancy will continue on a month-to-month basis.

However, RJ testified that near the end of the fixed term, ZH contacted the Tenant to ask if they were planning to stay. When the Tenant indicated that they would stay, ZH advised that the Landlord would be raising the rent. RJ submitted that the Tenant advised ZH that per the law, the rent could not be raised more than 2%. RJ testified that ZH indicated that is too little and threatened to end the tenancy by occupying it themselves if the Tenant did not agree to a rent increase.

RJ testified that based on ZH's threats to end the tenancy if they did not pay the rent increase, the Tenant began paying \$3,000.00 per month, an increase of \$600.00 in July 2024. RJ testified that the Tenant did not make an application to dispute the rent increase at that time because they were suffering from a mental health condition begin in July.

ZH testified that they were not aware that the tenancy agreement would automatically convert to a month-to-month tenancy when the fixed term ended. ZH testified that the Tenants rent was low, and the Landlord's costs increased which put the Landlord under significant pressure.

ZH testified that the Tenant agreed to the rent increase above the allowable amount and began paying \$3,000.00 in monthly rent on July 28th, 2023. ZH testified that because the Tenant had agreed to the rent increase, they asked the Tenant to sign a Mutual Agreement to End Tenancy to set aside the first tenancy agreement. However, the Tenant did not sign the Mutual Agreement and said they were busy. ZH testified that because the Tenant was paying the increased rent, they believed the Tenant agreed to

the rent increase. ZH testified that the rent increase was mutually agreed to by the parties and the Tenant made the payments willingly.

Lost Wages

The Tenant is seeking a Monetary Order in the amount of \$3680.00 for 10 days of unpaid sick leave and one month of wage losses. RJ testified the relationship between the Tenant and RJ became hostile causing the Tenant significant stress and leading to a mental health diagnosis. RJ referred to a medical note which is submitted into evidence to support the Tenant's claim. RJ testified that due to ZH's communication with and conduct toward the Tenant during the tenancy, the Tenant was required to take 10 days of unpaid sick leave and lost their job. The Tenant is seeking reimbursement from the Landlord for these lost wages.

ZH testified that they do not believe they caused the Tenant psychological distress, and they felt their communications were normal. ZH testified that they are unaware of what else was going on in the Tenant's personal life and they do not believe they can be blamed for the Tenant's mental illness. ZH testified that the Landlord disputes the Tenant's claim for lost wages and unpaid sick leave.

Analysis

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested or is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Based on sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulations. Further, section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony and evidence of the parties, I find the Tenants have not extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the Act because while the condition inspections may not have been completed, the Landlord did not meet their obligation under section 35(2) and 23(2) to provide the Tenants with at least 2 opportunities to participate in the inspections.

Residential Tenancy Policy Guideline 17 states that a Landlord who extinguishes the right to claim against the security deposit for damage to the rental unit retains the right to claim against the deposit for any monies owing other than damage to the rental unit. Therefore, I find it is not necessary for me to determine whether the Landlord

extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the Act because extinguishment only relates to claims for damage to the rental unit. In this case, the Landlord has claimed for losses other than damages to the rental unit including unpaid rent and compensation for missing key fobs, replacement locks and strata penalties.

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.

I have previously found that this tenancy ended on December 27, 2023, based on the Tenant's written notice to end the tenancy. The Landlord acknowledged receipt of the Tenant's forwarding address on January 6, 2024. However, the Landlord did not make their application for dispute resolution claiming for losses other than damages to the rental unit until February 14, 2024. Therefore, I find that the Landlord did not make their application within 15 days of when they received the Tenant's forwarding address.

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

Based on the foregoing, under section 38(6) of the Act, I order that the Landlord must pay the Tenants double the security deposit plus interest as they have not complied with section 38(1) of the Act.

Policy Guideline 17 sets out that where a landlord has to pay double the security deposit to the tenant(s), interest is calculated only on the original security deposit and is not doubled.

To give effect to this Order, the Tenant is granted a Monetary Order in the amount of \$2,454.13 as set out below.

The Landlord is still entitled to claim for loss and damage. I have considered those claims below.

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

ZH testified that they are seeking \$6,000.00 in unpaid rent based on their assertion that the Tenant left personal items at the rental unit.

Under section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable.

In other words, in this case, the latest day the tenant could provide a signed, written notice to end the tenancy on December 27, 2023, was November 26, 2023. I accept RJ's testimony which is supported by the Tenant's documentary evidence that the Tenant provided a signed, written notice to end tenancy to ZH by pre-agreed email to the email address indicated as the Landlord's agent's address for service on the tenancy agreement on November 17, 2023 and that ZH received the Tenant's notice to end tenancy on the same day and responded to the email. On that basis, I find that the Tenant provided sufficient notice to end this tenancy on December 27, 2023, and vacated rental unit on or before that date.

Therefore, I find in favour of the Landlord that the tenancy ended on December 27, 2024, and the Landlord is not entitled to rent for any period beyond December 27, 2024.

Regarding the items left at the property by the Tenant, the Landlord was at liberty to deem the items abandoned under section 24(1)(a) of the Residential Tenancy Regulation and remove the personal property and deal with it in accordance with Part 5 of the Regulations.

While I acknowledge the consistent evidence of the parties that items were left at the rental unit by the Tenant, I find this does not support the Landlord's application for unpaid rent.

Ultimately, I find the Landlord has not proven their claim for unpaid rent. The Landlord's application for a Monetary Order for unpaid rent is dismissed without leave to reapply.

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 each of the following:

1. the Tenant has failed to comply with the Act, regulation or tenancy agreement
2. loss or damage has resulted from this failure to comply
3. the amount of or value of the damage or loss
4. the Landlord did whatever was reasonable to minimize that damage or loss

In this case, I find the Landlord has failed to meet the requirement of part 1 of the above noted four-part test. The Landlord did not complete a move-in condition inspection report to document the condition of the rental unit at the outset of the tenancy.

Moreover, the Landlord's documentary evidence has been excluded from my consideration based on insufficient service of said evidence. Therefore, in light of the Tenant's testimony indicating that any damage to the rental unit following the tenancy was either present at the outset of the tenancy or the result of normal wear and tear, I find that the Landlord has failed to prove that any damage to the rental unit present at the end of the tenancy was the result of the Tenant's non-compliance with the Act, Regulation or tenancy agreement.

Having determined that the Landlord has failed to prove that any damage resulted from the tenant's failure to comply with the Act, regulation or tenancy agreement, I find it unnecessary to determine this claim further.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas is 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?

Key fobs and replacement lock

The Landlord is seeking compensation in the amount of \$283.50 in relation to hiring a locksmith to attend the property to open the rental unit and mailbox and replace the lock and keys as well as \$200.00 for the costs associated with replacing two key fobs.

The Tenant concedes that they misplaced the keys and does not dispute these claims. On that basis, I find that the Landlord is entitled to a monetary award in the amount of \$483.50, as set out below.

Strata Penalties

I have considered the positions of the parties, and I accept that strata penalties may have been issued while the Tenant occupied the rental unit. However, I find it is unclear based on the testimony of the parties and the documentary evidence of the Tenant whether the Tenant signed a Form K or received a copy of the strata bylaws from the

Landlord, such that the tenancy agreement could be deemed amended to include the strata bylaws. In the absence of this documentation, I find I am unable to conclude that the strata penalties issued to the Tenant were the result of the Tenant's non-compliance with the tenancy agreement, the Act or Regulations. As a result, I find that the Landlord has failed to meet part 1 of the above noted four-part test.

Based on the foregoing, the Landlord's application for the compensation for strata penalties is dismissed without leave to reapply.

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

To be awarded compensation for a breach of the Act, the Tenant must prove each of the following:

1. the Landlord has failed to comply with the Act, regulation or tenancy agreement
2. loss or damage has resulted from this failure to comply
3. the amount of or value of the damage or loss
4. the Tenant did whatever was reasonable to minimize that damage or loss

Overpayment of Rent

Residential Policy Guideline 30 discusses rent increases and fixed term tenancies and states:

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. For clarity, a tenant signing a subsequent fixed term tenancy agreement does not constitute a written agreement to increase rent above the maximum annual allowable amount. The tenant's written agreement must specifically state that they agree to a rent increase above the maximum annual allowable amount.

In this case, I find there is no evidence before me to support that the Tenant's rent increase was based on an order from an arbitrator or that the Tenant specifically agreed in writing to a rent increase above the maximum annual allowable amount. On that basis, I find that the Tenant has established that the Landlord failed to comply with the Act when they threatened to end the tenancy at the end of the fixed term if the Tenant did not pay the rent increase. Therefore, I find the Landlord's non-compliance with the Act resulted in a loss to the Tenant given that they paid the increased rent to avoid the loss of their tenancy.

With that said, I note that part 4 of the above noted four-part test, which is consistent with section 7(2) of the Act, requires the claimant, in this case, the Tenant to do whatever is reasonable to minimize their loss. Importantly, the Tenant concedes that they were aware that the rent increase sought by the Landlord was illegal and advised the Landlord of the same. However, rather than making an application to dispute the rent increase immediately, they paid the increased amount. Had the Tenant acted immediately and filed an application to dispute the rent increase, in my view, they could have significantly minimized their claim.

With that said, I find the Landlord's conduct in this instance is significant and cannot be excused by their assertion that they were unaware of the relevant legislation. For that reason, I find it reasonable to award the Tenant half of their claim in the amount of \$1,500.00, as set out below.

Lost wages

The Tenant is seeking compensation in the amount of \$5,520.00 for unpaid sick leave and one month of lost wages. I have considered the Tenant's claim, and I find that this claim fails on part 3 of the above noted four-part test. The Tenant has provided no documentary evidence such as pay stubs or information from their employer to support their actual rate of pay, why and or when they were terminated or left their position, or their assertion that they were not compensated for sick days. For this reason, I find that Tenant has failed to establish the value of any actual loss that may or may not have been the result of the Landlord's non-compliance with the Act, Regulation or tenancy agreement. Having made this finding, I make no further findings as to the merits of the Tenant's claim.

The Tenant's application for a monetary award for lost wages and unpaid sick leave is dismissed without leave to reapply.

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.

Based on the foregoing, I find it reasonable to grant the Tenant a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$1,500.00.

Is either the Landlord or Tenant entitled to recover the filing fee for this application from the other party?

As both parties were partially successful in their applications, I find they are both entitled to recover the \$100.00 filing fee paid for this application from the other party under section 72 of the Act. However, I find it reasonable to offset each filing fee against the other and not award the filing fee to either party for that reason. The parties' applications for authorization to recover the filing fee for these applications from one another under section 72 of the Act are dismissed without leave to reapply.

Conclusion

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

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 dismissed without leave to reapply.

The parties' applications for authorization to recover the filing fee for these applications from one another under section 72 of the Act are dismissed without leave to reapply.

I grant the Tenants a Monetary Order in the amount of **\$3,470.63** under the following terms:

Monetary Issue	Granted Amount
Tenant's Monetary Order for the return of double the security deposit under section 38 of the Act (\$1,200.00 x 2)	\$2,400.00
Interest on Tenants' Security Deposit	\$54.13
Tenant's Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$1,500.00
Landlords' Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	-\$483.50
Total Amount	\$3,470.63

The Tenants is provided with this Order in the above terms and the Landlords must be served with **this Order** should they fail to pay the above noted funds to the Tenants within seven (7) days of receipt of this decision. Should the Landlords 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. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: December 5, 2024

Residential Tenancy Branch