

DECISION

Introduction

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

The Landlord's Application for Dispute Resolution, filed on August 27, 2024, is for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for 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 Tenants' 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 Tenants under section 72 of the Act

The Tenants' Application for Dispute Resolution, filed on October 14, 2024, is for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under 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 under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

K.C. (he/him) attended the hearing for the Landlord.

Tenant M.B.(she/her), Tenant J.B.(he/him) attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants acknowledged service of the Proceeding Package and are 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 Tenants acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

The Landlord argued that I should not rely on the Tenants photographs as evidence for making my decision. The Landlord testified that the Tenants served their evidence as printed 'thumbnail' pictures which were too small to see any details. The Tenants testified that the Landlords evidence was also thumbnails, so they believed they served their evidence to the Landlord appropriately. The Landlord served their evidence to the Tenants digitally, so the thumbnails could be enlarged.

I find that the Tenants' evidence, with the pictures in the format of thumbnails, was served to the Landlord in accordance with section 88 of the Act.

The Landlord's digital files could be enlarged by myself and the Tenants. The Tenants' printed files could not be enlarged by the Landlord. It would be unfair to the Landlord if I were to rely on the enlarged versions of the thumbnails that the Tenants provided.

Residential Tenancy Branch Rule of Procedure 3.7 states "identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution..." This rule also gives me discretion to refuse to consider evidence. I find that the thumbnail versions of the Tenants' photographs are identical to the printed thumbnails served to the Landlord.

Therefore, I find it appropriate to rely on the Tenants' evidence, but I will only view the Tenants' photographs as thumbnails to ensure that the Landlord has the identical document as me.

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 or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

As the Tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit? Or Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Are either of the parties entitled to recover the filing fees for their Application?

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.

Evidence was provided showing that this tenancy began on August 29, 2023, with a current monthly rent of \$1,995.00, due on first day of the month, with a security deposit in the amount of \$997.50 and a pet damage deposit in the amount of \$997.50. The rental unit is a half-duplex.

The tenancy was a fixed term set to end on September 31, 2024, however the Tenants vacated the rental unit on September 2, 2023.

The Tenants claims as follows:

Pet Deposit	\$ 997.50
Security Deposit	\$ 997.50
August pro-rated rent	\$ 193.00
September Rent	\$1,995.00
Moving Expenses	\$ 550.00
Property Damage Assessment Report	\$ 157.50
BC Hydro Account Activation Fee	\$ 100.00
Interest on Loan for expenses (related to end of tenancy)	\$ 729.55
Filing Fee	\$ 100.00
Total	\$5,820.05

The Landlord claims as follows:

Liquidated Damages	\$1,995.00
October Rent	\$1,995.00
October Late Fee	\$ 25.00
Filing Fee	\$ 100.00
Total	\$4,015.00

The parties agree that that the Landlord showed the rental unit to the Tenants over a video call before the start of this tenancy. The Landlord stated that when they did the video walkthrough the rental unit was clean and empty. There was a hole in one wall that the was shown to the Tenants during the video walkthrough.

The Tenant J.B. testified that during the video walkthrough the Landlord told them the shower would be fixed when they moved in, but the Landlord did not say what was broken.

The parties agree that the Tenants arrived on August 29, 2023, and the parties completed a condition inspection report together in person. The Tenants testified that this report, which the Landlord submitted, did not accurately depict the state of the rental unit.

The Landlord testified that during the condition inspection the Tenants pointed out a leak, and the smell of cigarette smoke. The Landlord set up an ozone generator to address the cigarette smell. The Landlord testified that the smell of cigarette smoke is gone. The Landlord testified that the Tenants did not identify any other major issues during the condition inspection report. The Landlord and Tenants signed the condition inspection report.

The Tenants notified the Landlord about problems with the shower later.

The Tenants testified that the condition inspection was alarming, the rental unit had multiple issues including:

- strong odor of cigarette smoke
- garbage around the exterior of the rental unit
- the rental unit was not cleaned
- the refrigerator door was duct taped together
- a window screen was duct taped to hold it in
- weather stripping was missing on an exterior door
- a stair railing was not connected properly to the wall
- the shower did not work as there was no handle attached.
- there was black mold in the caulking around the shower, and the wall was bubbling out
- the bathroom fan and vent had no switch
- the shower temperature did not work correctly
- the bedroom window had a fist size hole in it
- a toilet above the electrical panel was leaking

The Tenants testified that the Landlord told them the additional issues would be added to the condition inspection report after they signed. The Tenants signed the condition inspection report without all of their issues being on it.

The Tenant M.B. testified that the Landlord had a worker reattach the shower handle, but it still did not supply hot and cold water properly, and the seal let water leak everywhere.

The Tenant J.B. testified that he is a firefighter and would not have rented a rental unit that allowed smoking. The Tenants were not informed that the rental unit smelled of cigarette smoke M.B. had headaches and a scratchy throat from the rental unit. M.B. testified that the ozone generator only masked the smell and did not solve the problem.

The Tenants testified that they spoke with the Landlord about issues that required repair, but the Landlord stopped responding to them. The Tenants paid a restoration company to complete a Property Damage Assessment Report for the rental unit. The Tenants provided the invoice for that report, but not the report itself. The Tenants testified that the report from the restoration company noted that the windows should be replaced, the shower surround was poorly installed, and the bathtub faucet needed replacing among other issues. The cost for repairs was about \$50,000.00 according to this report.

K.C. testified that the Landlord has not received a copy of the report from the restoration company. K.C. testified that the window that was broken is a double pane window that is broken only on the outside and the interior window is fine. So, when the interior pane is closed there is no hole to the outside.

The Landlord testified that on September 7, 2023 they received an e-mail from the Tenants that the Tenants had vacated the rental unit on September 2, 2023. The Landlord stated that the Tenants did not give them a chance to fix any of the issues with the rental unit. The Tenants lived in the rental unit for only 5 days.

The Tenants argued that the Landlord breached a material term because of the smoke smell and the inoperable shower. The Tenants believe the rental unit was not habitable. The Tenants claim that the Landlord should return their security and pet damage deposit. The Tenants also stated that they incurred moving expenses and had to take out a loan for them. The Tenants seek compensation for the interest on that loan as well as the moving expenses.

The Landlord argues that neither the smoke smell, nor the shower issue is a material term, and the Tenants did not give the Landlord a chance to fix the issues before the Tenants moved out. Further, some of the issues discussed in this hearing were never brought up to the Landlord before. The Landlord claims that the Tenants breached the tenancy agreement and should pay the Landlord their damages.

The tenancy agreement includes a liquidated damages clause stating:

[if the tenant vacates the rental unit] before the end of any fixed term, the tenant will pay to the landlord the sum of \$1,995.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated

The Tenants and the Landlord initialed beside this clause.

The Landlord testified that the liquidated damages are a genuine pre-estimate of costs to pay their marketing management fees. The Landlord typically pays a placement fee for rental units which is usually 50%-100% of one month's rent, as well as ongoing fees for the whole tenancy.

The Landlord testified that they re-listed the rental unit as soon as they got the Tenants' notice they had vacated the rental unit. The Landlord uses a computer program that lists the rental unit on several sites at once. The Landlord also created listings on other websites manually. The Landlord rented out the rental unit starting in November, 2024, for \$100.00 less per month than the Tenants had agreed to pay.

The Landlord testified that the Tenants did not pay rent for October. The tenancy agreement also states that the Tenants will pay a \$25.00 late fee for late rent payments.

The Landlord received the Tenants' forwarding address on August 27, 2024, and has not paid back the security and pet damage deposits to the Tenants.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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

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.

Under sections 7 and 67 of 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

Residential Tenancy Branch Policy Guideline #30 at section E explains that during the fixed term, neither the landlord nor the tenant may end the tenancy except in certain circumstances. One such circumstance is if the landlord has breached a material term of the tenancy agreement. In this context the tenant is required to give written notice of the landlord's failure to comply with the material term in question and provide a reasonable period to correct the situation, as set out in section 45(3) of the Act. If this is done, and the landlord does not correct the issue, the tenant may end the tenancy on a date that is after the date the landlord received notification of the issue.

Residential Tenancy Policy Guideline #5 explains, that when a tenant gives notice to end a tenancy that is earlier than is permitted by the tenancy agreement, the landlord is not required to rent the rental unit for an earlier date. To mitigate their loss, the landlord

must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

I find that the Tenants did not comply with section 45(3) of the Act, as they did not notify the Landlord in writing that they believed the Landlord was in breach of a material term. Further, the Tenants did not give a reasonable timeline for the Landlord to correct the breach. I find that the Tenants did not provide the Landlord with a reasonable opportunity to address any of the issues that they complained of, given that they vacated the rental unit 5 days after the start of the tenancy.

I find that the Tenants breached the Act, and the fixed term tenancy agreement by ending the tenancy earlier than the end date of the fixed term.

I accept the Landlord's testimony that *reasonable* efforts were made to re-rent the unit as quickly as possible by posting it on several rental websites as soon as possible, and that a new tenant was found for November, 2023. I find that the Tenants were obligated to pay rent for the month of October, 2023 but they failed to do so.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for October, 2023 in the amount of \$1,995.00 as claimed.

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

Under sections 7 and 67 of the Act, to be awarded compensation for a breach of the Act, the Landlord must prove:

- the Tenants have 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.

As stated above, I find that the Tenants breached this fixed term tenancy agreement by ending the tenancy earlier than was allowed without cause.

Residential Tenancy Policy Guideline #4 states:

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. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

This tenancy agreement included a clause for liquidated damages at paragraph 3 of the addendum. This clause specifically stated that the liquidated damages are not a penalty and are for compensation of all costs associated with re-renting the rental unit.

In this case, the liquidated damages clause is intended to compensate the Landlord for the costs of re-renting the rental unit after the Tenants' 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 accept the Landlord's testimony that they typically pay placement fee of 50%-100% of a month's rent as well as ongoing fees once the unit is rented. I find that the liquidated damages clause is a genuine pre-estimate of the Landlord's costs of re-renting the rental unit. Therefore, I find that the Landlord has established that the Tenants breach caused the Landlord to suffer a loss, and the value of that loss is \$1,995.00, as stated in the liquidated damages.

I find that the Landlord acted reasonably to minimize their loss, by listing the rental unit for rent soon after they discovered the Tenants have vacated.

The tenancy agreement provides that the Tenants will pay a late fee of \$25.00 on late payments of rent. I find that the Tenant, by failing to pay rent in October, 2024, has incurred this late fee.

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 \$2,020.00. (\$1,995.00+\$25.00= \$2,020.00)

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under sections 7 and 67 of the Act, to be awarded compensation for a breach of the Act, the Tenants must prove:

- the Landlord 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 32 of the Act requires that landlords provide and maintain the rental unit in a state of decoration and repair that "complies with the health, safety and housing

standards required by law”, and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

I accept the Tenants’ evidence that the rental unit smelled of cigarette smoke and the shower did not work properly at the start of the tenancy. However, the Tenants have not supplied any evidence that the smell of smoke constitutes a violation of a health, safety, or housing standard required by law. I further accept the Tenants’ evidence that the rental unit was not as clean as they wanted it to be. However, from the evidence that I am able to consider, I find that the Landlord complied with health, safety and housing standards required by law having regard to the age, character and location of the rental unit.

I accept the Tenant’s testimony that there was a hole in the bedroom window. I find that the Tenants’ did not give the Landlord a reasonable opportunity to repair the window. Further, the Tenants have not demonstrated that the hole made the rental unit uninhabitable. I accept the Landlord’s testimony that if the inside window is closed, there is no hole to the outside.

I accept the Landlord’s testimony regarding efforts made to repair deficiencies in the rental unit. I find that the Landlord acted reasonably in the circumstances, given that the Tenants vacated the rental unit before the Landlord had a chance to investigate and respond to the Tenants’ complaints.

On a balance of probabilities, I find that the rental unit was suitable for occupation by a tenant. I find that the Tenants have not established that the Landlord breached the Act.

For the above reasons, the Tenants’ application 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 is dismissed, without leave to reapply.

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit? Or Is the Landlord entitled to retain all or a portion of the Tenants’ security deposit in partial satisfaction of the monetary award requested?

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 August 27, 2024, and the Landlord made their application the same day, I find that the Landlord made their application within 15 days of the forwarding address being provided.

I find that the Landlord was authorized to retain the Tenants’ security and pet damage deposits.

The Tenants paid a security deposit of \$997.50 and a pet damage deposit of \$997.50 to the Landlord on August 8, 2023. Under the regulations these deposits have accrued \$64.94 interest.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' security and pet damage deposits with interest of \$2,059.94, in partial satisfaction of the monetary award. (\$997.50+\$977.50+\$64.94 = \$2,059.94).

Are either of the parties entitled to recover the filing fees for their 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

grant the Landlord a Monetary Order in the amount of **\$2,055.06** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$1,995.00
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 (\$1,995.00+\$25.00)	\$2,020.00
authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act . (\$997.50+\$977.50+\$64.94 = \$2,059.94)	-\$2,059.64
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
Total Amount	\$2,055.36

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: December 1, 2024