

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's 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 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

This hearing also dealt with the Tenant's Application for Dispute Resolution under the Act for:

- authorization to recover the security deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Tenants acknowledged service of the Landlord's Proceeding Package and are duly served in accordance with the Act.

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### **Service of Evidence**

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

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## **Preliminary Matter**

The Tenants' application for dispute resolution lists 2 people as tenants who are not listed as tenants on the tenancy agreement and who did not sign the tenancy agreement. Tenant R.M. testified that the additional persons listed in the Tenants' application are family members who moved into the rental property part way through the tenancy.

Based on the testimony of Tenant R.M. and the tenancy agreement entered into evidence, I find that only R.M. and K.N. are tenants as they are listed as Tenants in the tenancy agreement and signed the tenancy agreement. I find that the other 2 persons listed in the Tenants' application for dispute resolution are occupants and therefore do not have standing to make this application for dispute resolution. Therefore, under section 64 of the Act, I amend the Tenants' application for dispute resolution to remove the occupants.

## **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 a Monetary Order for money owed or compensation for damage or loss?
- Is the Landlord entitled to retain all or a portion of the Tenants' 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?
- Are the Tenants entitled to recover the security deposit from the Landlord?
- Are the Tenants entitled to recover the filing fee for this application from the Landlord?

## **Background and Evidence**

I have reviewed all presented 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 October 15, 2023, with a monthly rent of \$2,500.00, due on the 15<sup>th</sup> day of the month, with a security deposit in the amount of \$1,250.00. This was a fixed term tenancy set to end on October 15, 2024. The Tenant entered into evidence proof of an e-transfer of the security deposit to the Landlord on October 11, 2023.

The Landlord testified that the rental property is a basement suite and she resides in the unit above. The Landlord testified that she rents the entire house from the owner and sublets the rental property to the Tenants.

Both parties agree that the Tenants provided the Landlord with their forwarding address on September 9, 2024 by leaving it in the Landlord's mailbox. The Landlord confirmed receipt on September 9, 2024. The Landlord filed this application for dispute resolution on September 21, 2024.

The Landlord testified that a verbal move in condition inspection report was completed at the start of this tenancy but a written report was not completed. This was not disputed by the Tenants. Both parties agree that a move out condition inspection occurred on July 21, 2021. An unsigned move out condition inspection report was entered into evidence. Tenant R.M. testified that the report was not completed together with the Landlord and she was not permitted to see what the Landlord was writing.

Both parties agree that there was a water leak that originated in the Landlord's unit and caused damage to the rental property. It was not disputed that the Tenants were not responsible for the water leak. Both parties agree that on or around June 21, 2024 the Tenants gave the Landlord notice to end tenancy effective July 21, 2024. Tenant R.M. testified that they ended the tenancy early because of the water damage to the rental unit. Tenant R.M. testified that before giving notice to end tenancy they did not give the Landlord written notification that if the water damage was not repaired by a specific date they would end the tenancy earlier than the end of the fixed term.

Both parties agree that the Tenants paid rent for June 15, 2024 to July 14, 2024. Both parties agree that the Tenants did not pay rent for July 15-21, 2024.

The Landlord testified that due to the water damage, the rental property was not in a rentable condition when the Tenants moved out and could not immediately be advertised or re-rented. The Landlord testified that the water damage repairs to the rental property were not completed until mid August 2024 which is when she started advertising the rental property for rent at the same rental rate as rented to the Tenants. The Landlord testified that she was unable to re-rent the rental property until November 1, 2024. The Landlord testified that she is seeking lost rent and rental income from July 15, 2024 to October 15, 2024, the end of the fixed term, for a total of \$7,500.00.

The Landlord testified that she is seeking the following damages unrelated to rent and loss of rental income:

Item	Amount
Medicine cabinet	\$369.00
Shower head	\$29.98
Smoke detector	\$19.97
Carpet cleaning	\$242.97

### Medicine cabinet

The Landlord testified that the medicine cabinet in the bathroom was less than 3 months old at the start of this tenancy and was damaged and in need of repair at the end of the tenancy. The Landlord testified that the medicine cabinet was in pretty good condition at the start of this tenancy and at the end of the tenancy the doors did not close and the cabinet was loose from the wall. The Landlord entered into evidence a receipt for the cabinet replacement in the amount of \$369.00. A photograph of the medicine cabinet showing the cabinet at the start of the tenancy was entered into evidence, it shows the cabinet closed with no obvious defects. Not all of the cabinet can be seen in the photographs. A photograph of the medicine cabinet taken at the end of the tenancy was entered into evidence. It is a close up photograph with the doors open and shows that it is not properly affixed to the wall.

Tenant R.M. testified that the medicine cabinet was wobbly on move in and the door never closed properly. Tenant R.M. testified that the medicine cabinet was not in mint condition at the start of this tenancy and any further deterioration was normal wear and tear. Tenant R.M. testified that she did not know the age of the cabinet on move in.

### Shower head

The Landlord testified that the shower head was approximately 6 months old at the start of this tenancy and was missing at the end of the tenancy. The Landlord testified that she replaced the missing shower head at a cost of \$29.98. A receipt for same was entered into evidence.

Tenant R.M. testified that she returned the shower head to the Landlord on October 7, 2024. The Landlord confirmed receipt on October 11, 2024 but testified that at that point the shower head had already been replaced.

### Smoke detector

The Landlord testified that the smoke detector was new at the start of this tenancy and the Tenants took it with them when they moved out. The Landlord testified that she paid \$19.97 to buy a new smoke detector. A receipt for same was entered into evidence.

Tenant R.M. testified that they accidentally took the smoke detector with them when they moved out and returned it to the Landlord on October 7, 2024. The Landlord confirmed receipt on October 11, 2024 but testified that at that point the smoke detector had already been replaced.

### Carpet cleaning

The Landlord testified that the Tenants left carpet stains throughout the rental property and in particular in one of the bedrooms and that she had to hire a carpet cleaning

company to clean them. A receipt for same in the amount of \$242.97 was entered into evidence.

Tenant R.M. testified that she saw the damage to the carpets but wanted to see what the Landlord thought of it before doing anything. Tenant R.M. testified that in the move out condition inspection the Landlord didn't say anything about the carpets. Tenant R.M. testified that she would have hired someone to clean the carpets if the Landlord had raised the issue.

## **Analysis**

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

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the Tenants were obligated to pay rent while residing at the rental property. Both parties agree that the Tenants did not paid rent for July 15-21, 2024. I find that the Tenants are required to pay pro-rated rent for the above period in the amount of \$564.55. In accordance with section 67 of the *Act* I award the Landlord unpaid rent of \$564.55.

### **Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss?**

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline #5 states that where the landlord or tenant breaches a term of the tenancy agreement the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not

do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the testimony of both parties, I find that the Tenants breached the fixed term tenancy agreement by ending the tenancy before the end of the fixed term, contrary to the tenancy agreement and section 45(2) of the Act. In accordance with Policy Guideline #3, the Landlord is entitled to compensation for any loss of rent up to the end of the fixed term tenancy, that being October 15, 2024 as long as the Landlord took reasonable steps to mitigate their loss.

According to Policy Guideline #5, the duty to mitigate begins when the person entitled to claim damages becomes aware that damages are occurring. The Tenants informed the Landlord of their intention to vacate the rental property on June 21, 2024. The Landlord did not start advertising the rental unit for rent until August 15, 2024, nearly two months after they learned of the Tenants plans to move out. The delay in advertising the property for rent was not the fault of the Tenants as they did not cause the leak that required repair. Had the Tenants caused the leak the Landlord may have been entitled to damages for the entire duration that the property was being repaired, but that is not the case at present.

I find that in failing to advertise the rental property for rent when they first became aware of the breach of section 45 of the Act, the Landlord failed to mitigate their damages. I find that it would be inappropriate to penalize the Tenants for the water leak repair that they did not cause.

I accept the Landlord's testimony that new tenants did not move into the rental property until November 1, 2024 and that she did not receive rental income from July 15, 2024, 2024 to October 15, 2024 representing a loss of \$7,500.00. Since the Landlord did not advertise the rental property until mid August 2024, approximately 2 months after the Tenants notified the Landlord of their intent to end the tenancy, the Landlord's claim for damages is reduced by two months rent, equivalent of \$5,000.00, for failure to mitigate damages.

Based on my above findings and sections 7 and 67 of the Act, I award the Landlord \$2,500.00 in loss of rental income.

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

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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

### Medicine cabinet

The parties did not agree on the move in condition of the medicine cabinet. I find that the Landlord failed to prove the move in condition of the medicine cabinet because a written move in condition inspection report was not completed contrary to section 23 of the *Act*. The photograph showing the move in condition of the medicine cabinet does not show how well the cabinet is affixed to the wall or if there is a problem with the door. I find that the photograph is not enough to prove the functionality of the cabinet door or its attachment to the wall.

As the Landlord has not proved the move in condition of the medicine cabinet, I find that the Landlord has not proved that the move out condition was the fault of the Tenants versus regular wear and tear on an already damaged item. I find that the Landlord has failed to prove that the Tenant breached section 37(2)(a) of the *Act*. This claim is therefore dismissed without leave to reapply.

### Shower head

Based on the testimony of both parties I find that the Tenant took the shower head with her at the end of the tenancy contrary to section 37(2)(a) of the *Act*. I find that in replacing the missing shower head after the tenancy ended, the Landlord acted reasonably and that it was unreasonable for the Tenant to have taken it in the first place. I find that the Landlord has proved the value of the loss by way of the receipt for \$29.98 entered into evidence. I find that by the time the shower head was returned, the Landlord has already suffered the loss and is entitled to be compensated for that loss because it arose from the Tenants' breach of the *Act*.

Policy Guideline #40 states that faucets have a useful life of 15 years (180 months). I find that shower heads and faucets are similar and likely have the same useful life. I accept the Landlord's testimony that the shower head was 6 months old at the start of this tenancy and was missing at the end of this tenancy, contrary to section 37(2)(a) of the *Act*. I find that at the time the Tenants moved out, there was approximately 165

months of useful life that should have been left for the shower head of this unit. I find that since the shower head required replacement after only 15 months, the Tenants are required to pay according to the following calculations:

$\$29.98 \text{ (cost of showerhead)} / 180 \text{ months (useful life of showerhead)} = \$0.17$   
(monthly cost)

$\$0.17 \text{ (monthly cost)} * 165 \text{ months (expected useful life of showerhead) after}$   
tenant moved out) = \$28.05

### Smoke detector

I accept the Landlord's testimony that the smoke detector was new at the start of this tenancy and that it was missing at the end of the tenancy contrary to the Act. I find that in replacing the missing smoke detector after the tenancy ended, the Landlord acted reasonably and that it was unreasonable for the Tenants to have taken it in the first place. I find that the Landlord has proved the value of the loss by way of the receipt for \$19.97 entered into evidence. I find that by the time the smoke detector was returned, the Landlord had already suffered the loss and is entitled to be compensated for that loss because it arose from the Tenants' breach of the Act.

Policy Guideline #40 states that smoke detectors have a useful life of 15 years (180 months). I find that at the time the Tenants moved out, there was approximately 171 months of useful life that should have been left for the smoke detector of this unit. I find that since the smoke detector required replacement after only 9 months, the Tenants are required to pay according to the following calculations:

$\$19.97 \text{ (cost of smoke detector)} / 180 \text{ months (useful life of showerhead)} = \$0.11$   
(monthly cost)

$\$0.11 \text{ (monthly cost)} * 171 \text{ months (expected useful life of showerhead) after}$   
tenant moved out) = \$18.81

### Carpet cleaning

Based on the testimony of both parties I find that the Tenants left the carpets stained at the end of the tenancy contrary to section 37(2)(a) of the Act. I find that it was reasonable for the Landlord to hire a carpet cleaner to clean the carpets. I find that the Landlord has proved the value of the loss suffered by way of the receipt for \$242.97. The Tenants were required to leave the rental property reasonably clean. The Tenant confirmed she saw the stains and did not have them cleaned before the end of the tenancy. The Tenants are required to compensate the Landlord for the loss of \$242.97 caused by the Tenants' breach of section 37(2)(a) 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?**

**Are the Tenants entitled to recover the security deposit from the Landlord?**

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 September 9, 2024 and the Landlord made their application on September 21, 2024, I find that the Landlord made their application within 15 days of the forwarding address being provided.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' security deposit of \$1,250.00, plus accrued interest of \$36.68 for a total of \$1,286.68. Accrued interest was calculated from October 11, 2023 to the date of this Decision, December 2, 2024 using the RTB online interest calculator.

As I have awarded the Landlord authorization to retain the Tenants' security deposit and accrued interest, I dismiss the Tenant's application for the Landlord to return their security deposit, without leave to reapply.

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

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

As the Landlord was successful in the Landlord's application for dispute resolution, I find that the Landlord is entitled to recover the \$100.00 filing fee from the Tenants.

As the Tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee from the Landlord.

## **Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$2,167.70** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 26 and 67 of the Act	\$564.55

a Monetary Order for money owed or compensation for damage or loss?	\$2,500.00
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	\$289.83
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	-\$1,286.68
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$2,167.70</b>

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) 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 2, 2024

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Residential Tenancy Branch