

## **DECISION**

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) by the Parties.

The Landlord applied for:

- a Monetary Order for unpaid rent 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 applied for:

- a Monetary Order for the return of all or a portion of their pet damage deposit under sections 38 and 67 of the Act

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

Both parties acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I therefore found the Proceeding Packages duly served in accordance with the Act, and the hearing proceeded as scheduled.

### **Service of Evidence**

Both parties acknowledged receipt of the documentary evidence and raised no concerns regarding service. I therefore found the documentary evidence before me duly served on each party in accordance with the Act and accepted it for consideration.

### **Preliminary Matters**

The following issue was withdrawn at the outset of the hearing with leave to reapply:

- 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

The Landlord stated that they have returned the Tenants' security deposit in full. As such, they requested to withdraw this issue from consideration. In accordance with section 64 (3)(c) of the Act, I have permitted the application to be amended and this issue is withdrawn.

## **Issues to be Decided**

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities, and compensation for damage or loss under the Act, regulation or tenancy agreement ?

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

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their pet damage deposit under the Act?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

## **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 that this tenancy began on August 1, 2023, with a monthly rent of \$1,700.00, due on first of the month, with a security deposit in the amount of \$1,700.00.

The Tenants testified that they gave the Landlord one month's notice to end the tenancy on July 30, 2024 and moved out on September 1, 2024.

Both parties confirmed that the security deposit of \$1,700.00 has been returned to the Tenants.

The Tenants applied for the return of their pet damage deposit on October 15, 2024.

The tenancy agreement only stipulated that a security deposit of \$1,700.00 would be paid upon execution. It did not stipulate that a pet damage deposit would be paid.

The Landlord submitted a monetary worksheet for claiming the Tenants owe \$3,020.40:

1. July 26 to August 1, 2023 (rent + utilities) \$319.26;
2. July 1 to August 1, 2024 (rent + utilities) \$1,747.58;
3. August 1 to September 1, 2024 (rent + utilities) in the amount of \$413.60;
4. September 1 to 6, 2024 (rent + utilities) \$339.96.
5. August 1 to October 1, 2024 (late payment fee) in the amount of \$75.00;
6. July 1 to October 1, 2024 (late payment fee) in the amount of \$100.00; and

7. September 1 to October 1, 2024 (late payment fee) in the amount of \$25.00.

Item #1                      Unpaid rent and utilities from July 26 to 31, 2023

The Landlord stated that the Tenants moved in on July 26, 2023 and agreed to pay for rent and utilities covering the period from July 26 to 31, 2023. The Tenants admitted that they had a verbal agreement of providing lawn mowing service to the Landlord in lieu of rent for this period. The Landlord said that when the Tenants moved out, they found that the Tenants did not mow the lawn. As such, they claimed the unpaid rent and utilities covering the said period in the amount of \$319.26.

Items #2 and #3        Unpaid rent and utilities from July 1 to August 31, 2024

The Tenants did not pay rent and utilities for July 2024 of \$1,747.58 and deducted a portion of August rent in the amount of \$413.36, totaling \$2,160.94.

The Tenants said that they did not pay the rent and utilities for July and only paid a portion for August rent because there was an emergency repair in the rental unit and that they had incurred expenses.

The Tenants provided an invoice issued by G. Plumbing dated June 4, 2024 in the amount of \$2,160.64 (the Invoice), and a credit card statement showing Tenant J.B. was charged of the said amount.

The description of work stated in the Invoice is as follows:

The client was experiencing severe drainage issues that prevented them from using their drains and caused flooding through their laundry drain whenever the upstairs kitchen sink was used or during laundry cycles. This urgent matter necessitated immediate attention to avoid further damage and inconvenience. (...)

The Tenants wrote an email to the Landlord on June 7, 2024, which states:

I am writing to bring to your attention an urgent matter that requires immediate action. On June 3, 2024, we reported an unforeseen plumbing issue in the entryway/Laundry room of the rented premises at [the rental unit]. (...) Although we reported the issue on June 3<sup>rd</sup>, the severity of the situation required us to act promptly, and the emergency plumber was dispatched on June 4, 2024 to limit further damage.

The Landlord wrote a reply email on June 8, 2024 which states:

On June 3 2024, night at 6:49pm, I have received the report from [Tenant S.B.], by phone, she said water leaking out the pipe. I gave a promise to [Tenant S.B.], to call the urgent plumber, unfortunately no plumber available at that night. (...)

June 4. 2024 morning at 8:01am, [Tenant S.B.] called for plumber to have permission to check the problem. as I know, plumber is going to free the pipes starting from upstairs. Somehow I received the call from [Tenant S.B.], said the problem hasn't been fixed because he unable to wait for the upstairs tenants to open the door. (...) Same day, [Tenant S.B.] called to let me talk with [G. Plumbing], but I did not give any permission for the plumber to do anything yet. (...) same night at 7:29pm, [Tenant J.B.] texted me and said "The problem has been dealt with appropriately." (...)

Afternoon (June 5.2024 at 4:02pm) I texted [Tenant J.B.] to follow-up the condition, and ask how the plugged pipes are solved, but seem like message went wrong, so I text [Tenant S.B] but same thing happened, no one respond.

June 6.2024 at 9:06am I called [G. Plumbing] office, asking for an estimate to replace new pipes. But I already receive credit card charge & email, that the job is completed.

The Landlord stated that once they were informed of the laundry leaking, they repeatedly requested the Tenants refrain from engaging the plumber and indicated that they would deal with the plumber themselves. The Landlord further said that the laundry leaking was outside of the Tenants' living area and not inside their room, so the issue was not an emergency.

Item #4      Compensation from September 1 to 6, 2024

The Landlord said that the Tenants moved out on September 1, 2024 but left a shipping container on the driveway. The container was eventually removed on September 5, 2024. The Landlord claimed that they are entitled to compensation of loss from September 1 to 6, 2024 in the amount of \$339.96 as the Tenants did not provide the Landlord vacant possession.

Items #5, #6 and #7      Late payment fees

Clause 3 of the tenancy agreement states "The Tenants agree to pay an additional \$25.00 for any late payments (not greater of 3 days after due date)."

The Landlord stated that they are entitled to a total of \$200.00 as late payment fees in accordance with clause 3 of the tenancy agreement.

## **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.

**Is the Landlord entitled to a Monetary Order for unpaid rent and utilities, and compensation for damage or loss under the Act, regulation or tenancy agreement?**

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.

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due whether the landlord complies with the Act, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. The Act proscribes a set of limited circumstances in which Tenants can deduct rent, which include the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by section 33(5) have been followed under section 33(7).

Item #1                      Unpaid rent and utilities from July 26 to 31, 2023

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 and utilities from July 26 to 31, 2023. In reaching this conclusion, I find that the parties had a verbal agreement that service would be provided to the Landlord in lieu of rent payment. The Landlord alleged that the Tenants had failed to provide the agreed service, which the Tenants did not deny. I find it more likely than not that the Tenants ultimately did not provide the service.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and utilities in the amount of \$319.26.

Items #2 and #3        Unpaid rent and utilities from July 1 to August 31, 2024

Section 33(1) of the Act defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property and for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- a) emergency repairs are needed;
- b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

While I accept that the laundry leaking is considered as an emergency repair under section 33(1), I find that the Tenants failed to comply section 33(c). In reaching this conclusion, I find that the Tenants engaged the plumber to do the repair the following day after notifying the Landlord of the leaking and did not give the Landlord reasonable time to make the repair. I find that the Tenants are not entitled to the reimbursement of the repair costs. As such, I find that the Tenants are not entitled to withhold the rent for July and deduct a portion of the August rent.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and utilities in the amount of \$2,160.94.

Item #4      Compensation from September 1 to 6, 2024

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

All four conditions of the abovementioned test must be satisfied to be awarded compensation.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants breached section 37 of the Act. The Tenants did not leave the rental unit reasonably clean when they vacated the rental unit by leaving a shipping container on the driveway.

However, the Landlord did not provide any supporting documentary evidence to demonstrate that they had incurred damages or loss as a result of the shipping container remain on the driveway. I also find that they did not prove the value of the loss. I further find that they failed to prove that they have done whatever was reasonable to minimize their loss.

For this reason, I do not find that the Landlord has proven this claim. I decline to order compensation for this claim.

Items #5, #6 and #7      Late payment fees

Section 7(1)(d) of the Residential Tenancy Regulations allow a landlord to charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent, if the tenancy agreement provides for that fee.

Policy Guide #4 states that 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. A clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

The Landlord relied on clause 3 of the tenancy agreement to charge the Tenants late payment fees. As I have not been provided with any evidence that the Landlord was being charged an administration fee or service fee by their financial institution as a result of the late payment, I find the late fee term of clause 3 is a penalty and not a fee that may be collected pursuant to section 7 of the Regulations. I find that clause 3 of the tenancy cannot be enforced.

Therefore, I decline to order compensation for this claim.

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

As the Landlord was partially successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 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 pet damage deposit under the Act?**

I have reviewed the totality of the Tenants' evidence. I find that there was insufficient evidence to demonstrate that the Tenants had paid a pet damage deposit in the amount of \$850.00.

As such, I find the Tenants are not entitled to a Monetary Order for the return of their pet damage deposit.

The Tenants' application for a Monetary Order for the return of all or a portion of their pet damage deposit under sections 38 and 67 of the Act is dismissed, without leave to reapply.

**Are the Tenants entitled to recover the filing fee for this application from the Landlord?**

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

## Conclusion

I grant the Landlord a Monetary Order in the amount of **\$2,480.20** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and utilities under section 67 of the Act	\$2,480.20
<b>Total Amount</b>	<b>\$2,480.20</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 10, 2024

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Residential Tenancy Branch