

DECISION

Introduction

This hearing dealt with the Landlord's and Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement

The Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- a Monetary Order for the return of all or a portion of their security deposit
- an order to end the tenancy based on a frustrated tenancy agreement
- authorization to recover the filing fee for this application from the Landlord

The Tenant acknowledged being served with the Landlord's hearing package and evidence sent by registered mail on October 18, 2024.

I deem the Landlord was served with the Tenant's hearing package and evidence sent by registered mail on October 24, 2024. The Tenant provided a copy of their Canada Post tracking number and receipt as evidence of this service. The Landlord failed to pick up the registered mail addressed to them.

As the Tenant served the Landlord in accordance with the Act and Rules of Procedure, it would be prejudicial to the Tenant to dismiss these claims or delay the proceeding by adjournment. The Tenant's claims are directly related to the Landlord's claims, and the evidence provided was largely communication between the parties of which the Landlord was already aware. The Landlord responded effectively to the Tenant's claims in their Oral testimony.

The agents for the Tenant's attended the hearing on behalf of the Tenant, and these agents will be referred to as the Tenant for the purpose of this decision.

Preliminary Matter

The following issue has been removed from the Tenant's application by amendment of the Arbitrator under section 64(3)(c) of the Act:

- an order to end the tenancy based on a frustrated tenancy agreement

Both parties confirmed that this tenancy ended based on the written notice of the Tenant, and the Tenant moved out on August 14, 2024.

The Tenant applied for an order to end the tenancy based on a frustrated tenancy. Neither party gave any evidence that the tenancy agreement was frustrated under the Doctrine of Frustration. The Tenant did make claims about the Tenant's right to end this tenancy under section 45.1 of the Act, however this is not the same as a tenancy ending by frustration.

As this tenancy already ended before this proceeding, and neither party is seeking an end to the tenancy for frustration of the tenancy agreement, I find that this part of the Tenant's application is not relevant to the proceeding, and is removed. I will consider the Tenant's arguments about the reason the tenancy was ended in my analysis.

Issues to be decided

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

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

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

Facts and Analysis

This tenancy began on October 15, 2023, with a monthly rent of \$3850.00, and with a security deposit of \$1925.00. The Tenancy was a fixed term with an end date of October 31, 2024.

The Tenant texted the Landlord on July 18, 2024, to notify the Landlord that the Tenant would be moving out of the rental unit early, effective August 14, 2024. The named Tenant's in this case are elderly, and needed to move into assisted living due to their

health and abilities, and a space had opened at a nearby assisted living facility. The Tenant informed the Landlord in their text of the reason for ending the tenancy early.

The Landlord acknowledged in their testimony that they received and accepted the Tenant's text message as notice for ending the tenancy early. The Landlord contacted their realtor who was in charge of renting the property and asked them to begin the re-rental process immediately.

The Landlord claims the unpaid rent, for the month of October 2024, in the amount of \$3850.00. The Landlord claims that the Tenant breached the Act by ending the tenancy before the end of the fixed term, and the Landlord was unable to re-rent the rental unit for the months of September and October 2024.

The Landlord testified that they already collected the rent for September 2024 by depositing the Tenant's post-dated cheque for that month. The Landlord also attempted to deposit the October rent cheque, but a stop cheque order had been applied. The Landlord claims they contacted their realtor immediately after receiving the Tenant's notice to end tenancy and asked them to re-rent the property as soon as possible.

The Landlord claims that their realtor told them they could not begin the re-rental process until the Tenant moved out of the rental unit and returned the keys. The Landlord does not know when the rental unit was advertised as available for rent, as the Landlord's realtor handled these matters. The Landlord confirmed that they did some minor work in the kitchen of the rental unit after the Tenant moved out of the unit, but that these modifications only took a few days.

The Landlord claims that despite calling their realtor agent on an almost daily basis, they were unable to find a new Tenant for the months of September and October 2024. Therefore, they believe they are entitled to the unpaid rent for these months due to the fixed term tenancy agreement.

The Landlord provided a copy of the tenancy agreement, the email from the Landlord's realtor to the Tenant confirming they were ending the tenancy before the end of the fixed term, and a copy of the October rent cheque as evidence to support their claims.

The Tenant testified as follows. After giving their notice to end tenancy on July 18, 2024, the Tenant contacted the Landlord regularly about re-renting the unit. The Landlord did not arrange any viewings of the rental unit during the remaining period of the tenancy. The only entry by the Landlord to the rental unit on July 23, 2024, was so the Landlord could assess the kitchen of the unit for 'renovation purposes', per the text message sent that same day.

The Tenant regularly monitored rental sites online and searched the rental address to see when it was posted for rent. The first time the rental unit was advertised as available for rent was on September 17, 2024, and it was listed for \$4000.00, which \$150.00 per month more than the Tenant paid for rent. The Landlord did not reduce the

advertised rent to \$3850.00 until October 5, 2024.

The Tenant further testified that the Landlord completed significant renovations in the kitchen of the rental unit, by removing a half wall, repositioning cabinets, and retiling the backsplash, before the rental unit was advertised for rent. The Tenant believes these renovations are the reason for the Landlord's delay in attempting to re-rent the unit. The Tenant provided photos taken before the renovation and photos from the Landlord's rental advertisement as evidence to support this claim.

The Tenant argues the Landlord failed to minimize their loss of rental income by not posting the rental unit for rent as soon as the Tenant gave their One Month Notice, by and by posting the rental unit for a significantly increased rent. The Tenant provided a copy of their written notice to end tenancy, and the rental posting history from Zillow for the rental unit, as evidence to support these claims.

The Landlord claims \$2283.25 for the cost of registration and fees to hire a new agency to rent out the rental unit. The Landlord claims this amount for liquidated damages of \$1925.00, plus the excess amount it cost them above the liquidated damages estimation under the tenancy agreement.

The Landlord testified that after receiving the Tenant's written notice, the Landlord contacted their realtor and agent to request they re-rent the unit as soon as possible. The Landlord testified that they were so anxious about the Tenant ending the tenancy early, that they called their realtor agent on an almost daily basis to demand that the unit be re-rented immediately.

The Landlord argues that these daily calls were the Landlord's attempts to minimize their loss and ensure the unit was re-rented as soon as possible. However, the Landlord testified that because of their actions and constant calling, their relator agent refused to continue working with the Landlord, and told the Landlord they would have to find a new rental agency to help them.

The Landlord's new rental agency cost \$2283.25 for registration and fees to advertise and re-rent the rental until. The Landlord confirms the rental unit was not rented in September or October 2024. The Landlord argues that they are entitled to liquidated damages, and the extra monetary loss associated with the cost of re-renting the unit.

The Tenant testified as follows. The Tenant initially agreed that the Landlord could retain their security deposit for liquidated damages due to ending the tenancy early. However, when the Landlord made no effort to advertise or re-rent the unit until September 17, 2024, and deposited the September 2024 rent cheque without the Tenant's consent and after they had given effective notice, the Tenant changed their position on the liquidated damages.

The Tenant argues the Landlord's failure to act promptly to re-rent the unit, and collect rent for the month of September without even attempting to rent the unit for that month, invalidates the Landlord's claim for liquidated damages.

The Tenant claims \$3850.00 for the return of the September rent collected by the Landlord by depositing their post-dated cheque. The Tenant argues that the Landlord was not entitled to collect the September rent without the consent of the Tenant or an Order from the residential tenancy branch. Further, the Tenant argues that the Landlord failed to make any attempt to re-rent the unit for September, and therefore failed to minimize their loss and are not entitled to collect rent for this month from the Tenant.

The Landlord testified that they contacted their realtor agent, followed by their second rental agency, on an almost daily basis to ask about the progress of re-renting the unit. The Landlord claims the minor renovations completed in the kitchen only took a couple of days, and the unit was ready to be rented by August 26, 2024. The Landlord claims they were informed by their agents that the market is slow, and it is not a good time to rent, and this is the reason the unit was unrented for the month of September and October 2024. The Landlord further claims that both the Landlord and their agents gave private showings to prospective tenant's after the Tenant moved out, before September 2024.

The Tenant claims \$1925.00 for the return of their security deposit. The Tenant argues that the Landlord does not have the right to retain the security deposit for unpaid rent or for liquidated damages, as the Landlord failed to take reasonable steps to minimize their loss due to the Tenant's early end to tenancy.

The Tenant further argues that they were entitled to end this tenancy early under section 45.1 of the Act, as the Tenant was required to enter assisted living due to a change in their health and ability during the tenancy. The Tenant only ended the tenancy early to move into this assisted living and care facility, which was clearly communicated in their written notice to end the tenancy, and absolves them of the requirement to pay liquidated damages for ending the tenancy early.

The Landlord claims the Tenant already agreed, by signing the tenancy agreement and by communication with the Landlord's agent, that the Landlord could retain the security deposit for liquidated damages. The Landlord claims the Tenant was not within their right to end this tenancy early, and they breached the tenancy agreement by ending the tenancy before the end of the fixed term.

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

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

The Landlord claims \$3850.00 for unpaid rent for the month of October 2024. The Landlord argues that the Tenant breached the Act and tenancy agreement by ending this tenancy early, before the end of the fixed term on October 31, 2024, and therefore the Landlord is entitled to rent for the remaining period of the tenancy.

Section 45(2) of the Act says that a tenant may not end a tenancy before the end of the fixed term.

Section 45.1 of the Act says that a tenant is eligible to end a fixed term tenancy early if a statement is made in accordance with section 45.2, confirming the tenant has been assessed as requiring long term care, and admitted to a long term care facility.

Section 45.2 says that a person authorized under the regulation who has assessed the tenant, may make a written statement in the approved form, confirming the tenant's eligibility to end a tenancy under section 45.1 of the Act.

Based on the evidence and testimony of the parties, I find that the Tenant has failed to prove that the Tenant was assessed under sections 45.1 and 45.2 as requiring long term care and admission to a long-term care facility.

The Tenant did not produce a copy of any statement made by a professional under the residential tenancy regulation assessing the Tenant's need for long term care, nor was any such statement provided to the Landlord in order to end this tenancy under section 45.1 of the Act. The Tenant gave a written notice to end tenancy, but did not refer to section 45.1 of the Act.

As the requirements for ending a tenancy under section 45.1 and 45.2 of the Act have not been met, I find that the Tenant breached section 45 of the Act by ending the fixed term tenancy early, before the end of the fixed term.

However, I find that despite the Tenant's breach of section 45 of the Act, the Landlord was required to take all reasonable steps to minimize their loss of rent in accordance with section 7 of the Act, and tenancy policy guideline 3. This includes making attempts to re-rent the unit as soon as possible, and for a reasonable amount of rent in the circumstances.

The Landlord has the burden to prove, on a balance of probabilities, that they have minimized their loss.

I find that the Landlord failed to provide any evidence of their attempts to re-rent the rental unit. The Landlord did not provide copies of any communication with their agents regarding re-renting the unit. The Landlord did not provide any evidence to support their claims that the kitchen renovations were complete by August 26, 2024, and did not hinder the unit being re-rented for September 2024. The Landlord did not provide any evidence of when the rental unit was advertised for rent, or for how much rent.

The Tenant provided evidence that the Landlord first listed the rental unit on September 17, 2024, a full 2 months after the Tenant gave their written notice to end tenancy. The Landlord could not provide any testimony to dispute this claim, as their only claim was that they called their agents constantly to get the unit re-rented, but did not provide any alternate date for when the unit may have been advertised as available.

For the above reasons, I find the Landlord has failed to prove on balance of probabilities that they took reasonable steps to minimize their loss of rental income as required by the Act.

Therefore, the Landlord's claim for unpaid rent of \$3850.00 for October 2024, 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?

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

The Landlord claims \$2283.25, which includes liquidated damages of \$1925.00 per the tenancy agreement, and the additional rental agency costs to the Landlord for re-renting the unit.

Based on the tenancy agreement provided by both parties as evidence, I find that term 6 of the agreement clearly states that the Tenant is liable for \$1925.00 for liquidated damages, if the tenant breaches the Act or tenancy agreement by ending the tenancy before the end of the fixed term.

I have found that the Tenant failed to prove that this tenancy ended under section 45.1 of the Act, and in fact breached section 45 of the Act by ending this tenancy early.

Tenancy Policy Guideline 4 says that if a liquidated damages clause is found to be valid, the Tenant must pay the stipulated sum.

I find that the liquidated damages amount of \$1925.00, equivalent to one half month of rent, is a genuine and reasonable pre-estimate of the loss the Landlord may suffer if the tenancy ends before the end of the fixed term. This amount may be lost in rental advertisement and agency costs, unit cleaning, and possible lost rental income during the re-rental period. Therefore, I find the liquidated damages clause of this tenancy agreement is valid, and the Tenant must pay this amount in accordance with the signed agreement.

However, I find the Landlord has failed to prove their claim for the remaining amount of \$358.25, for the additional agency costs associated with re-renting the unit.

The Landlord testified that this was the cost, above and beyond the liquidated damages amount, for hiring a new rental agency to re-rent the unit. However, the Landlord failed to provide any evidence of this cost. The Landlord did not provide a receipt, invoice, or any other documentary evidence to prove the value of their loss.

I find that in the absence of documentary evidence about these claimed additional agency fees, the Landlord has failed to prove the value of their loss beyond the liquidated damages sum.

Therefore, I find the Landlord is entitled to a Monetary Award of \$1925.00 for liquidated damages under the tenancy agreement and section 67 of the Act.

The Landlord's remaining claim for \$358.25 in damage under the Act and tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

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

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

The Tenant claims that the Landlord breached the Act and tenancy agreement by collecting rent for the month of September 2024, after the Tenant vacated the unit, and without the consent of the Tenant or an Order made under the Act.

Tenancy Policy Guideline 3 says that when a tenant ends a fixed term tenancy, a landlord may **make a claim** for the unpaid rent or lost rental income for the remainder of the fixed term, and they must prove they took all reasonable steps to minimize their loss of rent in order to be successful in that claim.

Although the Tenant breached section 45 of the Act by ending this tenancy early, I find that this tenancy did end based on the Tenant's written notice dated July 18, 2024, effective on August 14, 2024. The Landlord, by their own testimony, was in receipt of the Tenant's notice, and aware that the Tenant moved out of the rental unit on August 14, 2024.

Therefore, the tenancy agreement, and the Landlord's right to collect rent under that agreement, ended on August 14, 2024, or after the Landlord collected the August 2024 rent.

The Landlord was entitled to seek the Tenant's agreement to pay rent for the month of September 2024, or to make a claim under the Act for rent for that month, but the Landlord failed to take either of these actions, and in breach of the Act collected the rent for September 2024 after the tenancy agreement had ended.

The Landlord has failed to prove they attempted to advertise or re-rent the unit at any time before September 17, 2024. The Landlord did not provide any evidence of earlier rental advertisements, showings, or communications about re-renting the unit by September 1, 2024, as required under section 7 and 67 of the Act in order to successfully claim rent for this month.

I find the Tenant proved they minimized their own loss of rent by applying a stop cheque order to the rent cheque for October 2024, to prevent the Landlord from collecting any more rent in breach of the Act and without the proper application process.

Therefore, I find that the Tenant is entitled to a Monetary Order for \$3850.00, for the September rent collected by the Landlord in breach of the Act and tenancy agreement, under section 67 of the Act.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Both parties testified during the hearing that the Tenant and Landlord's agent discussed the liquidated damages clause and reached an agreement that the Landlord would retain the security deposit for this liquidated damages amount.

Although this agreement was not provided as evidence, both parties confirmed that this issue was discussed in writing over email between the parties, and before either party made this claim the understanding of both parties was that the Landlord would retain the security deposit for liquidated damages.

As I have found that the Landlord is entitled to liquidated damages under section 67 of the Act, in the same amount as the Tenant's security deposit, I find the Landlord is entitled to retain the security deposit of \$1925.00 under section 72 of the Act, in full and final satisfaction of the liquidated damages claim.

However, under section 38 of the Act, the Tenant is entitled to the return of any interest accrued on this security deposit. The total amount of interest to be returned to the Tenant, calculated on the date of this decision, is \$57.22.

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

As the Tenant was successful in this application, I find the Tenant is entitled to a Monetary Order of \$100.00 for the recovery of their filing fee from the Landlord, under section 72 of the Act.

Conclusion

I find the Landlord is entitled to a Monetary Order for \$1925.00, for liquidated damages under section 67 of the Act. I Order the Landlord, under section 72 of the Act, to retain the Tenant's security deposit of **\$1925.00**, in full and final satisfaction of this monetary award.

The Landlord's remaining claims for unpaid rent, and damage or loss under the Act regulation, or tenancy agreement, under section 67 of the Act, are dismissed, without leave to reapply.

Monetary Issue – Landlord's claims	Granted Amount
Liquidated damages under section 67 of the Act	\$1925.00
Tenant's security deposit	- \$1925.00
Total Amount to be paid to Landlord	\$0.00

I find the Tenant is entitled to a Monetary Order of **\$4007.22**, under, for the rent of September 2024 collected in breach of the Act by the Landlord, for the interest accrued on their security deposit, and for recovery of their filing fee for this application, under sections 67 and 72 of the Act.

The Tenant must serve this Order to the Landlord as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Provincial Court of British Columbia small claims.

Monetary Issue – Tenant’s claims	Granted Amount
Damage or loss under section 67 of the Act – September rent	\$3850.00
Tenant’s security deposit interest	\$57.22
Tenant’s filing fee	\$100.00
Total Amount to be paid to Tenant	\$4007.22

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

Residential Tenancy Branch