

## **DECISION**

### **Introduction**

This hearing was reconvened from previous hearings regarding the parties' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Tenants applied for:

- compensation of \$15,507.01 for damage or loss under the Act, regulations, or tenancy agreement pursuant to section 67 of the Act;
- return of the security deposit of \$2,250.00 under section 38 of the Act;
- an order requiring the Landlord to return the Tenants' personal property under section 65 of the Act; and
- authorization to recover the Tenants' filing fee from the Landlord under section 72 of the Act.

The Landlord applied for:

- compensation of \$1,343.80 for unpaid rent and/or utilities under section 67 of the Act, and authorization to retain the security deposit under section 38 of the Act;
- compensation of \$1,098.30 for damage caused by the Tenants, their pets, or guests to the rental unit or property under section 67 of the Act;
- authorization to recover the Landlord's filing fee from the Tenants under section 72 of the Act.

I issued interim decisions in this matter on October 18, 2024 and November 14, 2024. This decision should be read together with the interim decisions.

The Tenants and the Landlord attended this hearing and gave affirmed testimony.

### **Preliminary Matters**

#### **Service of Evidence**

The Landlord submitted additional email correspondence between the parties since the previous hearing. I find the Tenants to be sufficiently served with this evidence.

## **Partial Settlement**

The parties acknowledged that the Tenants' belongings had not been picked up by November 24, 2024 as previously agreed. During this hearing, the parties reached a partial settlement of their dispute as follows:

1. The parties will arrange for the Tenants to pick up their belongings from the Landlord's storage by Friday, December 20, 2024. If the Tenants do not pick up their belongings by that date, the Landlord may dispose of the belongings.
2. The Tenants will withdraw, without leave to re-apply, the portion of their claim for compensation related to their belongings and their claim for an order requiring the Landlord to return the Tenants' personal property.
3. The portion of the Tenants' claim for compensation related to utilities, the Landlord's claims for compensation, and the Landlord's claim relating to the security deposit will be determined on the merits.

## **Clarification of the Landlord's Claims**

The Landlord submitted a spreadsheet with a breakdown of the items claimed for compensation, which was given to the Tenants. This decision addresses the Landlord's claims as described in that spreadsheet.

The Landlord's evidence also suggests that the Landlord incurred printing and other costs for dispute resolution. While I do not find the Landlord to have specifically claimed for those costs in his application, I note that aside from the filing fee, the Act does not provide for the recovery of the costs of dispute resolution, including printing costs, time spent, or legal fees etc.

## **Issues to be Decided**

Are the Tenants entitled to compensation for damage or loss under the Act, regulations, or tenancy agreement?

Is the Landlord entitled to compensation for unpaid rent or utilities, and damage caused by the Tenants, their pets, or guests?

Is the Landlord entitled to retain the security deposit?

Are the parties entitled to recover their filing fees?

## **Background and Evidence**

I have reviewed all the evidence, including the testimony given, but will refer only to what I find relevant for my decision.

The parties entered into a tenancy agreement dated November 25, 2023, for a fixed term commencing on November 25, 2023 and ending on May 30, 2024. According to this agreement, the rent was \$2,250.00 due on the 25th day of each month, and the Tenants paid a security deposit of \$2,250.00.

Tenant AH testified that the tenancy agreement was signed in January 2024, after the tenancy had started in December 2023. AH explained that she got married on December 14, 2023 and asked the Landlord about moving in her husband, Tenant HH. The Landlord testified that this was a second agreement that was re-issued to include HH as a tenant.

According to the Landlord, AH abandoned the lease on February 27, 2024, after giving the Landlord a couple of days' notice that she would be leaving. The Landlord testified that HH left the unit on March 5, 2024, and that the Landlord received the keys to the unit on or around March 6, 2024.

AH testified that the parties had mutually agreed to end the tenancy. AH confirmed that the Landlord received the keys on March 6, 2024.

The Tenants left behind belongings in the rental unit when they vacated. The parties did not complete any condition inspection reports together.

The Tenants submitted their application on September 8, 2024. AH gave the Tenants' forwarding addresses during the previous hearings in this matter on October 18, 2024 and November 14, 2024, which were noted on the cover page of the interim decisions. The Landlord submitted his application on October 21, 2024.

The Tenants seek compensation for:

Item	Amount
Telus	\$491.66
BC Hydro	\$61.42
Filing Fee	\$100.00
<b>Total</b>	<b>\$653.08</b>

According to the Tenants, the Landlord had lied that no one used the rental unit after the tenancy ended. The Landlord's assistant MB moved into the rental unit on March 17, 2024 and used the Tenants' utilities. The Tenants asked the Landlord about disconnecting the services, but the Landlord ignored their emails. The Landlord did not return the Telus equipment. The Tenants provided a copy of their BC Hydro bill as well as emails from BC Hydro and Telus as evidence.

The Landlord testified that after the Tenants left, no one moved into the rental unit until April 2024. The Landlord testified that if someone had stayed overnight, it was for

cleaning the unit. The Landlord expressed that he is unable to disconnect the Tenants' account until a new person moves in and activates the account. The Landlord testified that the Tenants had left behind their Telus equipment, which was put into storage after the internet was disconnected.

The Landlord seeks compensation for:

Item	Amount
Rent (March 1 to 5, 2024)	\$362.90
HH Move-in Fee	\$200.00
Clean Up, Repaint, and Repair	\$700.00
Strata Fine for Furniture Move-in	\$100.00
Hotel Fine	\$262.50
Cash to HH	\$470.00
Storage Fees (March to October 2024)	\$1,252.90
Filing Fee	\$100.00
<b>Total</b>	<b>\$3,448.30</b>

The Landlord gave the following testimony and evidence:

- The Landlord was unable to re-rent the unit and took the rest of March 2024 to clean it out.
- The strata charged a \$200.00 move-in fee when HH moved into the rental unit.
- The Landlord purchased paint and paid MB to clean, repaint, and repair the unit. The Landlord submitted screenshots showing e-transfers sent to MB.
- The Landlord was fined \$100.00 by the strata due to HH moving in furniture on December 31, 2023 without receiving prior approval from the strata council and building manager. The Landlord submitted a letter from the strata dated January 8, 2024.
- The Landlord was fined \$262.50 by the hotel integrated in the rental building due to HH leaving belongings and garbage at the loading bay of the property on March 4, 2024. The Landlord submitted an invoice from the hotel dated March 5, 2024.
- The Landlord gave HH cash of \$470.00 that the Landlord seeks to recover.
- The Landlord has paid storage fees for the Tenants' belongings since March 2024. The Landlord submitted receipts and photos of the Tenants' items in storage into evidence.

The Tenants gave the following testimony and evidence:

- MB cleaned the rental unit on his own. The Landlord did not pay MB for cleaning. MB was asking the Tenants to pay for cleaning as well. The Tenants requested invoices, but the Landlord did not provide any. The Tenants question how the cost came to be \$700.00.
- The Landlord said he would pay the furniture fine as he was the one moving furniture with HH.
- The hotel invoice specifies a unit number that is not the Tenants' unit number.
- The Landlord never gave cash to HH.
- The storage invoices provided by the Landlord is for the Landlord's organization. The Tenants did not leave their belongings there. The Tenants contacted the Landlord in March and April 2024 to try to pick up their belongings. The Tenants do not believe that the emails after that are real.

## Analysis

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.

### **Are the Tenants entitled to compensation for damage or loss under the Act, regulations, or tenancy agreement?**

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

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

To determine whether compensation is due, the arbitrator may assess whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I will address the Tenants' claim for utilities below.

*Telus*

I find that according to section 3(b) of the parties' tenancy agreement, the monthly rent did not include internet or cablevision services.

The Tenants provided an email from Telus dated April 24, 2024, warning that the Tenants' account was scheduled for cancellation due to \$491.66 owing, with \$364.73 being past due. The Tenants also provided an email from Telus dated May 2, 2024, which requested the Tenants to return a Telus TV digital box by July 1, 2024 to avoid additional fees.

I find the Tenants did not provide an invoice or breakdown to explain the \$491.66 charge. I find the Tenants could have cancelled their Telus service and returned the Telus equipment when they moved out of the rental unit, but did not do so.

Based on the evidence presented, I am not satisfied that the Tenants had incurred the charge from Telus due to any breach of the Act, regulations, or tenancy agreement by the Landlord. I dismiss the Tenants' claim under this part without leave to re-apply.

### *BC Hydro*

I find the cost of electricity is not included in the monthly rent under section 3(b) of the parties' tenancy agreement.

The Tenants provided a BC Hydro bill for the period from February 6, 2024 to April 3, 2024. I find the Tenants had electricity charges totaling \$89.26 for this period, which was reduced to \$61.42 after accounting for a previous bill, a late payment charge, and a BC electricity affordability credit that the Tenants received.

I find this bill does not show daily electricity consumption in February and March 2024. I do not find the Tenants to have proven that the 676 kWh of electricity consumed from February 6 to March 31, 2024 was not mostly from prior to March 6, 2024, when the Tenants were still residing in the rental unit.

I find the bill shows a consumption of 38Kwh over 3 days from April 1 to 3, 2024, which suggests that the rental unit was being occupied during those days. However, I find the 3 days of electricity usage in April 2024, at an average \$1.40 per day, to be *de minimis*, or too minor, with negligible loss to the Tenants.

Furthermore, I find the Tenants did not act reasonably to mitigate their loss, as they did not need the Landlord's permission to contact BC Hydro to close their account by March 5, 2024. I find the Tenants' account was closed by BC Hydro on April 4, 2024, after a new person opened an account at the rental unit.

Therefore, I dismiss the Tenants' claim for reimbursement of BC Hydro without leave to re-apply.

**Is the Landlord entitled to compensation for unpaid rent or utilities, and damage caused by the Tenants, their pets, or guests?**

### *Pro-rated Rent*

Based on the e-transfer record provided by the Landlord, I find the Tenants had paid rent to the end of February 2024. I find it is undisputed that HH occupied the rental unit from March 1 to 5, 2024. As such, I find the Landlord is entitled to \$362.90 for 5 days of pro-rated rent as claimed.

### *Clean Up, Repaint, and Repair*

Under section 37(2)(a) of the Act, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Landlord provided photos of the rental unit taken shortly before and after the Tenants moved out on March 5, 2024. I find the photos taken shortly after the move-out show that the rental unit was not left reasonably clean. I find the Tenants had left behind furniture, belongings, and garbage in the unit.

However, I find the Landlord did not submit photos that clearly show any damage, including drywall or paint damage. I find the Landlord did not submit any receipts for painting or repair supplies. As such, I do not find the Landlord to have established that the Tenants have any caused damage to the rental unit beyond reasonable wear and tear.

The Landlord provided a screenshot showing e-transfer payments to MB dated April 2, 5, 7, and 11, 2024, for a total of \$700.00. The Tenants provided a message from MB in March 2024 indicating that MB was not paid to clean the unit. I find the Landlord has not provided evidence, such as correspondence with MB, an invoice, or a receipt to prove that the e-transfers to MB were for cleaning and repairing the rental unit.

Based on the foregoing, I find the Landlord is entitled to compensation for cleaning but not damage. In the absence of evidence such as the number of hours incurred for cleaning and a reasonable hourly rate, I fix the Landlord's loss for cleaning at a nominal sum of \$100.00. I dismiss the remainder claimed by the Landlord under this part without leave to re-apply.

### *Strata Move-in Fee and Fine*

Under section 7(1)(f) of the regulations, a landlord may charge a move-in or move-out fee charged by a strata corporation to the landlord.

I find AH already paid a move-in fee of \$200.00 to the Landlord on November 28, 2023. I find the Landlord has not provided evidence, such as an invoice, receipt, or other proof of payment, to show that the Landlord was required to pay the strata another \$200.00 move-in fee for HH.

Regarding the strata fine for moving furniture, I find the Landlord had moved the furniture together with HH on December 31, 2023, being aware at the time that the

elevator had not been booked. Furthermore, I find the Landlord only provided a letter from the strata dated January 8, 2024 describing the complaint. I find there is insufficient evidence to prove that the strata council had in fact decided to impose a \$100.00 fine for this incident.

Accordingly, I dismiss the Landlord's claims for compensation under this part without leave to re-apply.

### *Hotel Fine*

Section 32(2) of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Based on the invoice dated March 5, 2024 provided by the Landlord, I am satisfied that on March 4, 2024, HH had left behind items and garbage in a loading bay or common area of the residential property, which was cleaned up by the onsite staff. I find the invoice includes photo evidence of the garbage spilled on the floor. I find this invoice also identifies the correct rental unit number and HH by his first name. I accept the Landlord was charged \$262.50 for the cleanup. I find the Landlord is entitled to recover the cost of this fine from the Tenants.

### *Cash to HH*

I find the Landlord's claim for cash given or loaned to HH is not a claim that arises under the Act, the regulations, or the tenancy agreement. I find that I do not have jurisdiction to decide this claim. I dismiss this claim without leave to re-apply.

### *Storage Fees*

Under section 26(1)(a)(i) of the regulations, if the tenant claims the tenant's abandoned personal property, the landlord may, before returning the property, require the tenant to reimburse the landlord's reasonable costs of removing and storing the property.

I find the Tenants travelled abroad for some time after vacating the rental unit. I find the Landlord emailed the Tenants on April 1, 2024 to ask them to contact him once they return to pick up their belongings. I find the Landlord informed the Tenants that he will rent a storage unit. I find the Landlord emailed the Tenants again on June 27, 2024 about their belongings after not receiving a response. I find AH may not have received this email as her email address appears to be spelled incorrectly. However, I find HH's email was correct.

I accept the Landlord rented a self-storage unit to store the Tenants' belongings under the name of the Landlord's organization. I find the Landlord provided photos showing the Tenants' belongings in storage. I find the Landlord provided receipts for storage fees from March 31, 2024 to October 30, 2024, as follows:



- \$299.92 charged for March 31 to June 29, 2024
- \$96.18 refund applied on June 6, 2024
- \$135.45 charged for June 30 to July 30, 2024
- \$240.45 charged for July 31 to August 30, 2024
- \$240.45 charged for August 31 to September 29, 2024
- \$240.45 charged for September 30 to October 30, 2024

I find the total paid for storage from March to October 2024 to be the sum of the above charges less the \$96.18 refund, or  $\$1,156.72 - \$96.18 = \$1,060.54$ . I find the receipts show that there were initially discounts on the storage fees. I find the receipts show that the storage unit was switched sometime in June 2024, and the discounts ran out later in July 2024.

I find the Tenants are responsible for the cost to store their belongings during the period claimed by the Landlord. I accept the Landlord will adjust the expenses as necessary between himself and his organization. Therefore, I find the Landlord is entitled to recover the cost of the storage fees of \$1,060.54 from the Tenants.

### **Is the Landlord entitled to retain the security deposit?**

Pursuant to sections 24, 36, and 39 of the Act, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the Act and the regulations.

I find the Landlord did not complete a move-in condition inspection report with AH at the start of the tenancy. I find the Landlord's right to claim against the security deposit for damage to residential property was therefore extinguished under section 24(2)(c) of the Act.

Under section 38(1) of the Act, a landlord must repay a security deposit to the tenant with interest, or make an application for dispute resolution claiming against the deposit, within 15 days after the later of the tenancy end date or the date the landlord receives the tenant's forwarding address in writing.

I find the Landlord applied to claim against the security deposit on October 21, 2024, within 15 days of being sufficiently served with the Tenants' forwarding address on October 18, 2024. I find the Landlord included claims against the security deposit that are not for damage to residential property. As such, I find the Landlord complied with section 38(1) of the Act, and the doubling provision of section 38(6) of the Act does not apply.

I have found above that the Landlord is entitled to compensation less than the total security deposit held. I find the balance of the deposit must be returned to the Tenants with applicable interest.

The interest rate on security deposits was 1.95% in 2023 and 2.7% in 2024. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenants are entitled to interest of  $\$4.45 + \$10.79 = \$15.24$  on the security deposit from the start of the tenancy (November 25, 2023) to the end of the tenancy (March 5, 2024).

I further note that for future reference, section 19(1) of the Act states that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. A person who contravenes this section may be liable on conviction to a fine under section 95(1)(b) of the Act.

### **Are the parties entitled to recover their filing fees?**

As both the Landlord and the Tenants have had partial success, I find the parties are entitled to recover their respective filing fees from each other under section 72(1) of the Act, to be set off as described below.

### **Conclusion**

Pursuant to section 62(3) of the Act, I grant the Tenants a Monetary Order of **\$479.30**, calculated as follows:

<b>Item</b>	<b>Amount</b>
<b>Amount Payable by Landlord to Tenants</b>	
Credit for Security Deposit Held	\$2,250.00
Interest on Security Deposit	\$15.24
Tenants' Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$2,365.24</b>
<b>Less Amounts Payable by Tenants to Landlord</b>	
Pro-rated Rent from March 1 to 5, 2024	- \$362.90
Cleaning	- \$100.00
Hotel Fine	- \$262.50
Storage Fees from March 31 to October 30, 2024	- \$1,060.54
Landlord's Filing Fee	- \$100.00
<b>Subtotal</b>	<b>- \$1,885.94</b>
<b>Net Payable by Landlord to Tenants</b>	<b>\$479.30</b>

The Tenants must serve the Landlord with a copy of this Order as soon as possible. If the Landlord does not comply with this Order, this Order may be filed and enforced in the Small Claims Division of the Provincial 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: January 11, 2025

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Residential Tenancy Branch