DECISION

Introduction

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

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for damage to the rental unit or common areas
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security and pet damage deposits 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

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 and pet damage deposits
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Tenant acknowledged being served with the Landlord's hearing package and evidence sent by email on November 18, 2024. The Landlord acknowledged being served with the Tenant's evidence sent by email on January 3, 2025.

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 under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security and pet damage deposits in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of all or part of the Tenant's security and pet damage deposits?

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

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

Facts and Analysis

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

This tenancy began on February 16, 2022, with a monthly rent of $3008.00 due the first day of each month, and with a security deposit of $1425.00 and pet damage deposit of $1425.00. The tenancy agreement was a fixed term ending February 28, 2025.

The parties confirmed that a move in condition inspection report was completed at the start of the tenancy on February 16, 2022, with both parties attending the inspection and signing the report. The Landlord did not attempt to schedule a move out condition inspection, and completed this inspection in the absence of the Tenant on November 3, 2024. The Tenant gave the Landlord their forwarding address on September 25, 2024, and moved out of the rental unit on November 1, 2024.

Landlord's Claims

Unpaid rent: $3008.00 + $7.50 stopped cheque fee

The Landlord claims $3008.00 for unpaid rent for the month of November 2024.

Both parties testified that the Tenant sent the Landlord an email on September 25, 2024, stating their intention to end the tenancy on November 1, 2024. The Tenant enclosed a mutual agreement to end tenancy with their email, which the landlord did not agree with or sign.

The Landlord argues that as they did not agree to allow the Tenant to end the tenancy before the end of the fixed term, that the Tenant moving out on November 1, 2024, constituted an abandonment of the rental unit, and therefore the rent was due.

The Tenant argues that their email on September 25, 2024, is not a proper notice to end tenancy under section 52 of the Act, and therefore they did not breach the fixed term tenancy agreement.

The Landlord testified that they first advertised the rental unit as available for rent at the end of September 2024, after receiving the Tenant's email. The Landlord listed the rental unit for $3400.00 per month, more than $300.00 more per month than the rent paid by this Tenant. The Landlord argues that this was a reasonable amount of rent compared to the 'market rate' for similar rental units in their area.

The Landlord was unable to re-rent the unit for $3400.00 per month despite multiple advertisements and an open house. On November 1, 2024, the Landlord reduced the asking price to $3100.00 per month, and found a new tenant at this rent commencing December 1, 2024.

The Tenant argues that the Landlord did not act reasonably to minimize their loss, because they listed the rental unit for such a significantly higher rent. The Tenant believes the unit could have been rented by November 1, 2024 if the Landlord had listed it for $3100.00 to start with, or even for the same amount of rent paid by the Tenant.

The Tenant provided evidence that the Landlord's initial listing of the rental unit was on craigslist for $3500.00 per month. The Tenant provided further evidence that the photos used in the advertisement were of poor quality, which may have impacted interest, and that the Landlord was able to re-rent the unit within 2 days of lowering the rent price to $3100.00.

Damaged fridge rack: $50.00

The Landlord claims $50.00 for a damaged fridge rack. The Landlord testified that they purchased the fridge rack, it did not fit in the fridge, so they returned it for a full refund.

Mirror door replacement: $138.00

The Landlord claims $138.00 for the estimated cost to replace the mirrored closet door from the rental unit due to a very small crack in the corner which they claim was caused by the Tenant. The crack has no impact on the function of the door, and is very small. The Landlord has not replaced the door to the date of this hearing.

Wall touch up and painting: $50.00

The Landlord claims $50.00 for the cost to patch and spot paint over nail holes in the walls of the rental unit, which the Landlord claims are wall damage caused by the Tenant hanging photos on the wall. The Landlord did this work themselves, and claims an hourly wage of $25.00 per hour for their time.

Cleaning: $50.00

The Landlord claims $50.00 for their time spent cleaning the floor of the garage of the rental unit. The landlord testified that the rental unit itself was clean, but the Tenant

failed to scrub the floors of the garage, which is used for parking vehicles, and failed to remove some garbage from the garage.

The Tenant testified that the garage floor was not in a perfectly clean condition when they moved into the unit, and that they should not be expected to scrub the concrete of an unfinished garage floor as part of their expectation to leave the rental unit reasonably clean.

Lost rental income: $2700.00

The Landlord claims $2700.00 for potential lost rental income. The Landlord claims that they could have re-rented this unit after the end of the Tenant's fixed term for $3400.00 per month, but instead have rented the unit for $3100.00 per month for a new fixed term ending December 2025. The Landlord claims they have lost $300.00 per month in potential rent income for the period of March 1, 2025 to December 2025, and this is the basis of their claim.

Tenant's Claims

Stopped payments: $72.00

The Tenant claims $72.00 for stopped payments applied to their post-dated cheques for payment of rent, for the remaining months of the tenancy (to March 2025) after the Tenant moved out in November 2024. The Tenant testified that the Landlord attempted to deposit their rent cheque for November 2024 after the tenancy had already ended, without the Tenant's consent or any previously made decision granting the Landlord rent for that month.

The Tenant put stop payments on all future rent cheques, as the Landlord failed to and refused to return the remaining post dated cheques for this tenancy. The Tenant did so as the Landlord had already attempted to deposit rent without authorization or the right to do so, and they were concerned the Landlord would continue to do so until the end of the fixed term.

The Landlord confirmed that they did attempt to deposit the November 2024 rent cheque, ad they argue that the tenancy agreement did not end by this date and that the Tenant abandoned the rental unit. The Landlord did not attempt to deposit any other rent cheques. The Landlord did not return the post-dated cheques to the Tenant.

Overpaid Utilities: $592.00

The Tenant claims $592.00 for utility payments made for the period of March 2024 to October 2024. The Tenant testified that under the previous tenancy agreement, utilities were included with the rent. Under the tenancy agreement signed by the parties in February 2024, the Tenant was required to pay $74.00 per month for water and sewage utilities.

The Tenant did not dispute the addition of the utility term to this tenancy agreement at the time of signing, nor at anytime thereafter, until after this tenancy ended and after the Landlord filed their application for compensation from the Tenant. The Tenant paid the $74.00 per month utility charge without issue, but now seeks to recover this as a loss as they claim the Landlord was not allowed to add this to the tenancy agreement in February 2024.

The Landlord testified that the Tenant never raised any issue with the utility payment, made the payment each month, and the Landlord used that money to pay the water and sewage utilities. The Landlord says this was an agreed upon term of the tenancy agreement in February 2024, and was clearly identified and agreed to at the time of signing and thereafter while the tenancy was ongoing.

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

Section 45 of the Act says that a fixed term tenancy agreement cannot be ended by a written notice by the Tenant if the effective date of that notice is before the end of the fixed term.

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

Based on the evidence and testimony before me, I find that the Tenant breached section 45 of the Act, and the tenancy agreement, by ending this tenancy on November 1, 2024, before the end of the fixed term tenancy.

I am not convinced by the Tenant's argument that their emailed notice to end tenancy did not comply with section 52 of the Act, and therefore their ending of the tenancy was not a breach of the fixed term.

If the Tenant gives written notice of their intention to move out of the rental unit, end the tenancy, and cease paying the rent due under a tenancy agreement, as this tenant did, that is a breach of a fixed term tenancy agreement and section 45 of the Act. The Tenant's failure to provide a signed written notice does not absolve them of their clear breach of the Act and agreement. The reality is that this tenancy ended, by the Tenant's

own decision, before the end of the fixed term, regardless of the form or content of the Tenant's notice to end tenancy.

Despite the Tenant's breach of the Act and agreement, I find that the Landlord has failed to prove that their loss of rental income resulted from the Tenant's breach, or that they took all the reasonable steps required to minimize their loss.

Tenancy Policy Guideline 3 says that a Landlord may be compensated for lost rental income where a Tenant vacates a rental unit before the end of their fixed term, but must have taken all reasonable steps to minimize their loss of rental income, which includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. It states that making attempts to re-rent the premises at a greatly increased rent is not a reasonable step to minimize loss.

I find that the Landlord's attempt to re-rent the premises for a significantly increased rent of $3400.00 was a failure to act reasonably to minimize their loss. The original rent for this tenancy was $2850.00 in February 2022. The Tenant paid $3008.00 per month for rent after the most recent tenancy agreement was signed in February 2024. In September 2024, the Landlord sought to increase this rent to $3400.00 per month, which is an increase of $392.00 per month, or over 13%, after only 8 months since the most recent agreement was signed.

I am not convinced by the Landlord's argument or evidence that this is the 'market rate' for the rental unit, nor that this amount of rent was reasonable in the circumstances. I do not find it likely that the value of the rental unit increased by $550.00 per month in the span of two years, nor am I convinced that increasing the asking rent price by almost $400.00 was a reasonable attempt to minimize loss.

Given that the landlord was able to re-rent the unit within a few days of reducing the rent price to $3100.00 on November 1, 2024, I find it likely that the reasonable rent price in these circumstances was $3100.00. I find that the Landlord's failure to reduce the asking rent from $3400.00 to $3100.00 at any time **before** November 1, 2024, is ultimately a failure to make any reasonable attempt to re-rent the unit before losing rental income for that month. I find it likely, on a balance of probabilities, if the Landlord had listed the rental unit for $3100.00 per month when they initially listed the rental unit, they would have successfully re-rented the unit for November 2024.

The Landlord's arguments about 'market value' rent fail for two reasons. Firstly, the size and location of a rental unit are not the only factors which determine the amount of rent which is reasonable. The age of a unit, condition of a unit, available amenities in the unit or building, location comparative to goods, services and public transportation, and the inclusion vs exclusion of utilities, are all factors which impact the 'value' of a rental unit. This is a highly subjective claim, and ultimately cannot be proven with a few examples of similarly sized units nearby, and is not proven by the Landlord's evidence in this case.

Secondly, I find the willingness of a new tenant or occupant to pay the amount of rent sought is far more indicative of the reasonableness of rent sought or value of the rental unit than the Landlord's assumption about the 'market value'. The Landlord was unable to rent the unit for over 6 weeks at the rent price of $3400.00. The Landlord was able to re-rent the unit within a few days at a rent price of $3100.00. I find this indicates, on a balance of probabilities, that the reasonable amount of rent for this unit is $3100.00.

For these reasons, I find the Landlord has failed to prove their claim for $3008.00 for unpaid rent or lost rental income for the month of November 2024, and for the stopped cheque fee of $7.50.

Therefore, the Landlord's claim for unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

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

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

Section 32 of the Act says a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, except for reasonable wear and tear.

Section 7(2) of the Act says a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

<u>Damaged fridge rack: $50.00</u>

Based on the evidence and testimony of the Landlord, I find the Landlord has failed to prove their claim for the fridge rack replacement.

The Landlord's own testimony is that they purchased and then returned the fridge rack for a full refund. Therefore, the Landlord has not proven any value of a loss, as they did not suffer a $50.00 loss to replace the fridge rack because the item was returned for a full refund.

Therefore, the Landlord's claim for $50.00 for the damaged fridge rack is dismissed, without leave to reapply.

Mirror door replacement: $138.00

Based on the evidence and testimony before me, I find the Landlord has failed to prove their claim for $138.00 to replace the mirrored closet door in the rental unit.

I find that as the Landlord has not actually paid to replace or repair this mirrored door, the value of their loss has neither been established nor proven. An estimate is not sufficient to prove the value of a loss because it is based on a possible future of which is not guaranteed. If I granted the landlord compensation based on an estimated possible future loss, I have no guarantee they will actually use this money for the purpose they claim, or if they will not replace the door or find some alternate lower cost option, and be unjustly enriched by this monetary award.

Even if the Landlord had replaced the mirrored door, their claim would have failed for failure to minimize their loss. The crack on the mirror is in the very bottom corner, is very small and almost unnoticeable, and has no impact on the function or purpose of the mirror. Certainly a shattered mirror or a mirror with a large crack down the center should be replaced, but to replace this mirror for ultimately a very minor cosmetic issue which has no impact on it's use would be a failure to act reasonably in the circumstances.

For these reasons, the Landlord's claim for $138.00 to replace the mirror door is dismissed, without leave to reapply.

Wall touch up and painting: $50.00

Based on the evidence and testimony before me, I find the Landlord ahs failed to prove their claim for $50.00 for wall touch ups and painting.

Section 32(4) of the Act says a Tenant is not required to make repairs for reasonable wear and tear.

Tenancy Policy Guideline 1 clearly establishes the use of small nails to hang items on the walls of a rental unit as a reasonable and normal use of the walls, and that any nail holes left behind are 'reasonable wear and tear', not damage. Therefore, I find the Landlord has failed to prove that the Tenant breached section 32(2) of the Act, or any part of the tenancy agreement. A Landlord is not entitled to compensation for reasonable wear and tear.

For these reasons, the Landlord's claim for $50.00 for wall touch up and painting 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

Cleaning: $50.00

Section 37 of the Act says a Tenant must leave the rental unit reasonably clean at the end of the tenancy.

Based on the Landlord's own testimony, I find that the Tenant left the rental unit in a reasonably clean condition, with the exception of the concrete floor in the garage and a small amount of garbage left in the bagged garbage bin.

I find that the Landlord has failed to prove that the Tenant breached section 37 of the Act by not scrubbing the garage floor clean at the end of this tenancy. I find that a concrete garage floor is typically expected to have some evidence of vehicle use, and deep cleaning of this concrete floor is not a reasonably expected cleaning task at the end of a tenancy.

Secondly, the Landlord provided no evidence that they actually cleaned the garage floor in the unit. The Landlord claims they spent two hours cleaning the floor, but did not describe how they did this, nor any photos of the floor being clean, or any other evidence that they spent time doing this claimed task.

For these reasons, I find the Landlord has failed to prove their claim for $50.00 to clean the garage floor of the rental unit.

Therefore, the Landlord's claim for $50.00 for cleaning is dismissed, without leave to reapply.

Lost rental income: $2700.00

Based on the evidence and testimony before me, I find the Landlord has failed to prove their claim for $2700.00 for lost rental income.

Tenancy Policy Guideline 3 says that compensation for lost rental income is to put the landlord in the same position as if the Tenant had complied with the tenancy agreement to the end of the fixed term. For example, if the Tenant paid $1000.00 per month for rent, and the Landlord re-rented the unit for $950.00 per month, they could seek compensation for the loss of $50.00 per month to the end of the Tenant's fixed term.

The Landlord is not entitled to compensation from the Tenant based on a significantly increased rent of $3400.00 per month. At no point was the Tenant responsible to pay the Landlord $3400.00 per month in rent. The Landlord re-rented the unit for $3100.00 per month, and is actually benefitting from increased rent of $92.00 per month from the new tenant compared to the Tenant's rent of $3008.00 per month.

I find that the Landlord has not lost any rental income for the remaining period of the fixed term (to March 2025), nor is the Landlord entitled to seek compensation for lost rental income beyond that point as the Tenant's contractual obligations to the Landlord end at the end of their fixed term.

The value of the Landlord's loss cannot be established or proven based on their assertion of what amount of rent they believe they could have received in March 2025, versus what they receive now. There is no guarantee that the Landlord could ever have successfully re-rented the unit for $3400.00 per month, whether that was in November 2024 or March 2025. The Landlord could have had the rental unit empty for months trying to obtain this amount of rent, or could have re-rented it for the exact same amount or even lower than what the Tenant paid during this tenancy. Compensation is not awarded based on the Landlord's assertions about their potential income in the best case scenario.

For these reasons, the Landlord's claim for $2700.00 for lost rental income is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested? If not, is the Tenant entitled to the return of all or part of the Tenant's security deposit being held without cause?

Section 38 of the Act states that within 15 days of the date that the tenancy ends, or the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must make an application for dispute resolution to claim against the tenant's deposits.

As the tenancy ended on November 1, 2024, after the Tenant had given their forwarding address in writing, and the Landlord made their application on November 15, 2024, I find the Landlord made their application to claim against the Tenant's deposits on time.

Although the Landlord failed to complete a move out condition inspection with the Tenant at the end of their tenancy, I find that doubling of the deposits in this case does not apply, because the Landlord made claims about issues other than damage to the rental unit, including about unpaid rent, lost rental income, and cleaning. Extinguishment only applies to claims about damage to the rental unit, not about other claims for other liabilities such as unpaid rent or monetary losses that are not related to damage.

As the Landlord's monetary claims in this case have all failed, I find that the Tenant is entitled to the return of the full amount of their deposits, plus interest, under section 38 of the Act.

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 tenant must prove on a balance of probabilities that:

- 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 tenant acted reasonably to minimize that damage or loss

<u>Stopped payments: $72.00</u>

Based on the evidence and testimony before me, and on a balance of probabilities, I find the Tenant has proven their claim for $72.00 for stopped cheque payments.

As I have found in my analysis above regarding the end of this tenancy, the Tenant ended the tenancy by their written notice of September 25, 2024, effective November 1, 2024. The Tenant did not abandon the rental unit as claimed by the Landlord.

Although I have found that the Tenant breached the fixed term tenancy agreement by ending this tenancy before the end of the fixed term, this again does not entitle the Landlord to collect rent for November 2024, unless they have proven that they took all reasonable steps to re-rent the unit for that month.

The Landlord failed to prove any entitlement to the rent for the month of November 2024, because they did not take the reasonable steps required to re-rent the unit for that month and thereby minimize their loss of rental income.

I therefore find that the Landlord's attempt to deposit the rent for November 2024 by the Tenant, was a breach of section 26 of the Act. The Tenant was not occupying the rental

unit in November 2024, and the Landlord did not have an entitlement to collect that rent under the tenancy agreement.

I find that the Tenant acted reasonably to minimize their potential loss, which was the possible loss of monthly rent if the Landlord continued to cash their rent cheques, by issuing stop cheque orders. The Landlord's failure to return the Tenant's post-dated cheques, and attempt to deposit one of these cheques without authorization, led to the Tenant's loss.

For these reasons, I find the Tenant is entitled to a Monetary Order of $72.00 for stop payment fees applied to their post dated cheques.

Overpaid Utilities: $592.00

Based on the evidence and testimony before me, I find that the Tenant is estopped from claiming compensation for the recovery of utility payments paid throughout this tenancy from March 2024 to October 2024.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly.

The Tenant made a conscious choice to accept the new tenancy agreement, including the term regarding payment of $74.00 per month for water and sewage, and signed the agreement inclusive of this term in February 2024. The Tenant did not produce any evidence not testify to any dispute raised with the Landlord about this added utility charge at the time of signing the new agreement, nor at any point thereafter until the tenancy ended.

The Tenant paid the full amount of the monthly utility charge, per the tenancy agreement, each month, without issue or dispute. The Tenant could have refused to accept the utility charge or challenged the attempted addition of this term by filing an application for dispute resolution with the Residential Tenancy Branch, or by simply not signing the new tenancy agreement presented to them, but took none of these actions..

There is no evidence of any concern being raised by the Tenant, in writing or otherwise, about the addition of utility charges until after this tenancy was over and this application filed.

By choosing to remain in the rental unit and start paying the water and sewage utility charge based on the tenancy agreement of February 2024, the Tenant accepted that the tenancy now included a term for payment of this utility. For the Tenant to concede paying the utility charges and then seek to have these payments returned to them after the tenancy ended would be unjust.

I therefore find that estoppel by convention applies in this case, as follows.

Estoppel by Convention:

In the Supreme Court of Canada decision, Ryan v. Moore, 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows:

> 59 .... After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:
>
> > (1) The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of silence (impliedly).
> >
> > (2) A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
> >
> > (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

Applying the foregoing, I find as follows:

> (1) The Tenant, having agreed to the addition of a monthly utility charge for water and sewage of $74.00 per month per the tenancy agreement of February 2024, and failing to formally raise any concerns with the addition of this term and making the payment each month without issue, created a mutual assumption upon which the Landlord relied.
>
> (2) The Landlord relied on this shared assumption, and paid the utility bills for water and sewage with the benefit the Tenant’s monthly payment.
>
> (3) It would be unjust and unfair to allow the Tenants to resile or depart from the common assumption that the utility payments were mutually agreeable as the Landlord, having relied on the Tenants agreement with the utility charges and undisputed payment of each monthly utility charge, paid their utility bills each month with the benefit of the Tenant’s agreed payment, and would be required to pay back money which has already been expensed for the use of water and sewage during this tenancy.

Applying the principle of estoppel by convention, I find that the Tenants are estopped from claiming compensation for their utility payments from March 2024 to October 2024.

For the above reasons, the Tenant's claim for compensation of $592.00 for ‘overpaid’ utilities is dismissed, without leave to reapply.

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

As the Landlord was not successful in their application, the Landlord’s claim to recover the $100.00 filing fee paid for this application under section 72 of the Act is dismissed, without leave to reapply.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I find the Tenant is entitled to a Monetary Order of **$3160.13** 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 Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Tenant’s security and pet damage deposits, plus interest	$2988.13
Tenant’s monetary award under section 67 of the Act	$72.00
Tenant’s filing fee	$100.00
Total Amount	**$3160.13**

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: February 19, 2025

Residential Tenancy Branch