

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Tenant's application for:

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

And the Landlord's application for:

- A Monetary Order of \$4,754.83 to recover the money for unpaid rent
- A Monetary Order of \$100.00 for compensation for monetary loss or other money owed under the Act
- Authorization to retain all or a portion of the Tenant's security deposit and pet damage deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- Reimbursement of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

I find that the Landlord acknowledged service of the Proceeding Package and documentary evidence from the Tenant and are duly served in accordance with the Act.

I find that the Tenant was deemed served on December 10, 2024, the third day after attaching the Proceeding Package and documentary evidence of a Monetary Calculation on the door of the rental unit in accordance with section 89(2) and 90 of the Act.

Section 90 of the Act states that documents posted to the door are deemed served 3 days later and I find the documents support the posted date of December 7, 2024.

The Landlord had a witness sign the Proof of Service form to confirm this service. Witness DB attended the hearing and confirmed service of documents.

As per the Landlord's testimony, I am satisfied with the service of the Proceeding Package and the Monetary Calculation for their application. The Tenant raised issue with additional evidence filed by the Landlord. As I am not satisfied on the service of additional evidence, those documents are excluded in full. The Landlord clarified they served additional evidence regarding prior Residential Tenancy Branch (RTB) disputes and the parties proceeded to reference those dispute file numbers during the hearing.

Preliminary Matters

At the outset of the hearing JB confirmed that they are the owner of the limited company and the landlord for the dispute before me. The Landlord provided their full legal name as listed on the Tenancy Agreement (TA).

Based on the above testimony, the TA, and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.12 and Rule 7.15, I amended both applications and added JB as a Landlord for this dispute.

As another preliminary matter, the Landlord testified that they were granted a monetary order of \$100.00 for a previous dispute resolution matter. The Landlord is seeking this amount from the Tenant as part of their current application.

This issue was previously decided by another arbitrator in an earlier dispute resolution decision and I cannot redecide the same issue. As a result, I dismiss without leave to reapply the Landlord's request for a Monetary Order of \$100.00 for compensation for monetary loss or other money owed under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Landlord entitled to recover the filing fee?

Is the Landlord entitled to retain all of the Tenant's security deposit and pet damage deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act, or is the Tenant entitled to the return of the security deposit and pet damage deposit that the Landlord is retaining without cause?

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.

This tenancy between the parties began on December 1, 2022. The Tenant occupied the rental unit since 2021, and the Landlord purchased the property in December 2022. The tenancy ended on October 26, 2024. The monthly rent at the end of the tenancy was \$1,000.00, due on the first day of each month. The Tenant paid a security deposit of \$850.00 and pet damage deposit of \$850.00, which the Landlord continues to hold in trust.

The parties did not complete a move-in Condition Inspection Report (CIR) or a move-out CIR. Both parties agreed that on November 1, 2024, the Tenant provided their forwarding address in writing to the Landlord.

The Landlord is seeking a monetary order as follows:

Item 1 – Unpaid rent for August 2024, September and October

- \$1,675.00, for August 2024
- \$1,675.00, for September 2024
- \$1,404.83 (monthly rent of \$1,675.00 ÷ 31 days, x 26 days), for October 1, 2024 to October 26, 2024

The Landlord testified that the Tenant paid monthly rent via e-transfer transactions and failed to do so from August 2024 to October 2024.

The Landlord testified that as per a previous RTB decision they were ordered to complete repairs and rent was reduced to \$1,000.00 per month, on or about November 2023. The Landlord testified that the repairs were completed by March 29, 2023, and thereafter the Tenant continued to pay monthly rent of \$1,000.00 per month.

The Landlord testified that the Tenant did not pay rent as noted above in this decision. The Landlord testified that they are seeking the amount of unpaid rent as noted on the TA, in the full amount of \$1,675.00 for August 2024 and September 2024, and for 26 days for October 2024.

The Tenant stated that after rent was reduced to \$1,000.00 per month, it was never increased to the amount of \$1,675.00. The Tenant testified that the Landlord attempted to serve to them illegal eviction notices, and they were unwilling to make repairs.

The Tenant testified that regardless of the above issues, they offered to pay rent in cash and had the envelope ready for pick up by the Landlord. The Tenant stated that the Landlord did not collect the rent. The Tenant testified that they did not refuse to pay owed rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, which is more likely than not, I find the following:

Is the Landlord entitled to a monetary order for unpaid rent?

Section 26 of the Act is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. In this case, I find the tenant did not have a right to deduct any portion of the rent. I find the Tenant failed to pay rent for three months, from August 2024 to October 2024.

The Tenant admitted that they did not pay rent for the above noted months, and I find they did not present a lawful reason to withhold rent.

I grant the Landlord a monetary award of \$2,838.71 as follows:

- \$1,000.00, for August 2024
- \$1,000.00 for September 2024
- \$838.71, for October 1, 2024 to October 26, 2024 (monthly rent of \$1,000.00 ÷ 31 days, x 26 days)

I decline to award any calculation based on unpaid rent of \$1,675.00 per month, for the total amount of \$4,754.83. I find there is insufficient evidence before me to conclude and accept monthly rent of \$1,675.00 for August 2024, September and October. The evidence before me shows the monthly rent was reduced to \$1,000.00 per month and thereafter the Tenant continued to pay that amount. There is no evidence to substantiate the increased rent of \$1,675.00, or payment of such.

Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I grant the Landlord the \$100.00 filing fee paid for this application under section 72 of the Act.

The Landlord is entitled to a monetary award in the amount of \$2,938.71 as follows:

- \$2,838.71, for unpaid rent for August 2024, September 2024 and for October 1, 2024 to October 26, 2024
- \$100.00 for the cost to the filing fee

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act, or is the Tenant entitled to the return of the security deposit and pet damage deposit that the Landlord is retaining without cause?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a

landlord must repay a security deposit and pet damage deposit to the tenant or make an application for dispute resolution to claim against it. Section 38(6) states if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit and pet damage deposit and must pay the tenant double the amount of the security deposit and pet damage deposit.

The tenancy ended on October 26, 2024, and the Tenant provided their forwarding address in writing to the Landlord on November 1, 2024. As the Landlord made their application on December 5, 2024, I find that the Landlord did not make their application within 15 days of receiving the Tenant's forwarding address. As the Landlord failed to comply with subsection (1) of the Act, I find they may not make claim against the deposit and must pay the Tenant double the amount of the deposits.

The security deposit of \$850.00 and the pet damage deposit of \$850.00 has accrued \$82.39 in interest. I find that the Tenant is entitled to the amount of \$3,482.39, for double the return of the total deposits, plus interest.

As the Landlord has been granted a monetary award of \$2,938.71, I authorize the Landlord to deduct this amount from the total deposits held in full satisfaction of the claim.

I order the Landlord to immediately return the balance of the deposits held, or \$543.68, to the Tenant. To give effect to this order, I grant the Tenant a monetary order in the amount of \$543.68.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$543.68** under the following terms:

Monetary Issue	Granted Amount
Monetary Award for double the return of their security deposit and pet damage plus interest.	\$3,482.39
Minus monetary award granted to the Landlord for unpaid rent.	-\$2,838.71
Minus authorization for the Landlord to recover the filing fee for this application from the Tenant under section 72 of the Act.	-\$100.00
Total Amount	\$543.68

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** to be enforceable. Should the Landlord fail to comply with this Order, this Order may be filed in the Provincial Court of British Columbia (Small Claims Court) to be enforced as an order of that court.

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 21, 2025

Residential Tenancy Branch