

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, filed on December 27, 2024, under the *Residential Tenancy Act* (“*Act*”) for:

- a Monetary Order of \$654.85 for unpaid utilities, under section 67 of the *Act*;
- a Monetary Order of \$885.60 for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”), or tenancy agreement, under section 67 of the *Act*;
- authorization to retain the Tenant's security deposit of \$600.00 in partial satisfaction of the Monetary Order requested, under section 38 of the *Act*; and
- authorization to recover the \$100.00 filing fee for her application from the Tenant, under section 72 of the *Act*.

This hearing also dealt with the Tenant's Application for Dispute Resolution, filed on January 14, 2025, under the *Residential Tenancy Act* (“*Act*”) for:

- a Monetary Order of \$541.94 for money owed or compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement, under section 67 of the *Act*;
- a Monetary Order for the return of the security deposit of \$600.00, under sections 38 and 67 of the *Act*; and
- authorization to recover the \$100.00 filing fee for her application from the Landlord, under section 72 of the *Act*.

Landlord K.L.A.H (“Landlord”) attended the hearing for the Landlord.

“Witness JB” attended the hearing for the Landlord. He was excluded from the outset at 11:02 a.m. He returned to testify from 12:05 p.m. to 12:16 p.m. only. He did not hear evidence from either party.

Tenant C.P. (“Tenant”) attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties confirmed receipt of the other party's proceeding package. In accordance with section 89 of the *Act*, I find that both parties were duly served with the other party's proceeding package.

Service of Evidence

Both parties confirmed receipt of the other party's evidence. In accordance with section 88 of the *Act*, I find that both parties were duly served with the other party's evidence.

I informed both parties that I would consider both parties' evidence at the hearing and in my decision, as both parties received and reviewed it. I notified them that this is despite the fact that it was received by the RTB late, less than 14 days prior to the hearing for the applicants, and less than 7 days prior to the hearing for the respondents, contrary to Rules 3.14 and 3.15 of the RTB *Rules*.

Preliminary Matter – Amendments

The Tenant confirmed that her current legal surname was "P" and not "S," which was her former maiden name, as indicated in the Landlord's application. The Landlord provided the correct spelling of her legal surname, which was spelled incorrectly in the Tenant's application.

Pursuant to section 64(3) of the *Act*, I amend both parties' applications to correct both parties' legal surnames and spelling. I find no prejudice to either party in making these amendments.

The Landlord stated that she wanted to increase her monetary claim for damages and losses from \$790.85 to \$840.60, plus the \$100.00 filing fee. She said that she did not file an RTB amendment form for this change. She claimed that she only submitted an updated monetary order worksheet with the higher amount. The Landlord's monetary order worksheet indicates a total of \$985.60, including the \$100.00 filing fee, not \$940.60, as claimed by the Landlord.

The Tenant said that she received the Landlord's updated monetary order worksheet, and she did not object to me considering the Landlord's higher monetary claim. Therefore, I considered the Landlord's increased monetary claim at this hearing and in this decision.

Pursuant to section 64(3) of the *Act*, I amend the Landlord's application to increase her monetary claim for damages and losses, based on both parties' consent. I considered the Landlord's claim for \$885.60, plus the \$100.00 filing fee, even though the Landlord indicated the wrong amount at the hearing, at \$45.00 less. I find that the Tenant received the updated monetary order worksheet, and this is the total amount indicated. I find no prejudice to either party in making this amendment.

Issues to be Decided

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

Is the Landlord entitled to a Monetary Order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement?

Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

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 her security deposit?

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

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2024, and ended on December 17, 2024. Monthly rent of \$1,200.00 was payable on the first day of each month. The Tenant paid a security deposit of \$600.00, which the Landlord continues to retain in full. No move-out condition inspection report was completed by both parties. The Landlord did not provide an RTB form as a second written opportunity to the Tenant, to schedule a move-out condition inspection. The Tenant provided a written forwarding address to the Landlord on December 9, 2024, by email, and on December 30, 2024, by registered mail.

The Landlord stated that a move-in condition inspection report was completed, including the Tenant's initials, but not using the RTB form. The Tenant said that no move-in condition inspection report was completed at all, and she did not put her initials.

The Landlord stated the following facts regarding her application. The Tenant caused wax damage to 2 areas of the baseboard and small table. There was a professional drywall estimated at \$100.00, and \$375.00 for the bill. The Tenant changed the shower head and the curtain in the bathroom and there was mold on the bottom counter, which the Tenant did not report. There was an issue with the bathroom cabinet, the Tenant put 3 wooden chairs outside, there were damages to 2 side tables, the Tenant turned off the heater and dehumidifier, and the Tenant used, her own utensils. The Tenant put items in private storage and the chair leg went through the door. There was water damage to the bathroom and there was a dryer missing. The Landlord provided videos of the roof, restoration, and pipe leak. There was a bathroom video submitted by the Tenant saying it was dry, but wet. There was mold and moisture on the cabinets before the Tenant reported it. There was no Teflon tape on the showerhead and the Landlord had to fix the shower damage. The water escaped the shower, damaging the drywall. The Tenant admitted her daughter showers excessively, in an email. The Tenant "lies" when it is "convenient." One of the videos shows damage to the right corner of the tub. The Tenant bought her own toilet brush from the dollar store and put the Landlord's toilet brush on the bookshelf. There was a dry video report of the bathroom in the video where the pipe burst. The damage was caused by the Tenant. The Tenant used a smaller shower head, which caused damage. There was a video regarding the bathroom cabinet report. There was moisture across the floor and a dehumidifier was needed because there was mold on the cabinets and this was long term, not 24 hours.

The Tenant stated the following facts in response to the Landlord's application. The wax damage can be taken away with a blow dryer and wiped off, which the Landlord can do. All the items claimed by the Landlord could be replaced at the dollar store. The Tenant used her own stuff instead of the Landlord silverware. The Tenant put stuff in storage. The items outside were under a covered area. The water ingress is not the Tenant's problem. She wiped the dresser because it was dirty. There were drip stains on the wall because there was no proper paint in the bathroom. There was condensation, not damage, and the Tenant could get rid of the condensation. The Tenant left the uninhabitable place because it was unbearable. The Landlord wanted to do repairs and needed a vacant rental unit.

The tenant stated the following facts regarding her application. She wants her security deposit of \$600.00. She wants \$541.00 for the rest of December money owed.

The Landlord stated the following in response to the Tenant's application. The hydro bill was taken off the money. She disputes the Tenant's claims.

Witness JB stated the following in response to the Landlord's questions, as the Tenant said she did not want to ask any questions. He was not renting the unit. He repaired only once, not more. On June 30, 2024, he repaired the leak under the sink. He made several trips to fix it. On January 3, 2025, he occupied the rental unit after the Tenant left on December 17, 2024. He had to "babysit," coordinate between contractors, and keep an eye on the water leak and check where the leak was.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

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

If the landlord provides utilities to a tenant, as a service or facility, pursuant to a tenancy agreement signed by both parties, the tenant is required to pay for those utilities.

It is the Landlord's burden of proof, on a balance of probabilities, as the applicant, to prove this claim. I find that the Landlord failed to provide sufficient evidence regarding this claim. The Landlord did not sufficiently reference or explain any amounts or utility bills, estimates, invoices, receipts, or other documents. The Landlord provided confusing testimony of different utility amounts owed and deductions she made, but did not explain these calculations in specific detail during this hearing.

The Landlord did not provide sufficient evidence regarding what type of utilities the tenant was required to pay under the tenancy agreement, what dates and amounts any utilities were used, what types of utilities were used, and what utility bills were due or paid. The Landlord did not provide sufficient evidence regarding what utilities, if any, were paid by the landlord, when they were paid, how they were paid, and what utility bills were paid.

The Landlord submitted two tenancy agreements as evidence with her application and did not explain either one. One tenancy agreement is on a standard RTB form and was signed by both parties on August 25, 2024, for a tenancy beginning on September 1, 2024, on a month-to-month basis, for rent of \$1,200.00 per month and a security deposit of \$600.00 per month. It indicates in section 3, page 2 that water is included in rent and it is written below that "hydro to be paid by tenant." The other tenancy

agreement is not on a standard RTB form, is signed by both parties and is undated. It is called "month-to-month lease agreement." This tenancy also begins on September 1, 2024, on a month-to-month basis, for rent of \$1,200.00 per month and a security deposit of \$600.00 per month. It indicates at section 15, page 3, that electricity, heat, hot water, and water are "are services/facilities provided to the apartment are included as a part of this lease and shall be borne by the Landlord." Therefore, it does not appear that the Tenant is even required to pay utilities in addition to her rent, according to the second lease.

For the above reasons, the Landlord's application for a Monetary Order of \$654.85 for unpaid utilities, under section 67 of the *Act*, is dismissed without leave to reapply. The above amount was taken from the Landlord's online RTB dispute access site application details.

Is the Landlord entitled to a Monetary Order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement?

Section 35 of the *Act* states that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the *Act* states that 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.

To be awarded compensation for a breach of the *Act*, the Landlord must prove under section 67 of the *Act*, the following 4 factors:

- 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; and
- the Landlord acted reasonably to minimize that damage or loss.

It is the Landlord's burden of proof, on a balance of probabilities, as the applicant, to prove these claims, including the 4 factors, as noted above. I find that the Landlord failed to provide sufficient evidence of damages and losses. The Landlord did not sufficiently review or explain specific amounts during this hearing, nor did she reference or explain any estimates, invoices, quotes, receipts, or other documents, regarding any amounts. She did not review or explain her updated monetary order worksheet. The

Landlord and her Witness JB provided confusing testimony of different damages, but did not indicate the amounts for any damages or losses.

Further, the Landlord did not review or explain the move-in condition inspection report and the Tenant denied that one was completed. Both parties agreed that no move-out condition inspection report was completed at the end of the tenancy. Therefore, I cannot sufficiently determine which damages existed at the beginning of the tenancy if any, and what damages were caused by the Tenant, if any. I find that the Witness JB did not assist with this information either. The Landlord did not indicate the age of the rental unit or the different elements of the rental unit, being claimed. Therefore, I cannot determine the useful life of these building elements, as per Residential Tenancy Policy Guideline 40.

For the above reasons, the Landlord's application for a Monetary Order of \$885.60 for damage to the rental unit and for money owed or compensation for damage or loss under the *Act, Regulation*, or tenancy agreement, under section 67 of the *Act*, is dismissed without leave to reapply. The above amount was taken from the Landlord's updated monetary order worksheet.

Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the monetary award requested?

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 to the tenant or make an application for dispute resolution to claim against it.

As I have dismissed the Landlord's application for utilities, damages, and losses, as noted above, the Landlord's application to retain the Tenant's security deposit of \$600.00, in partial satisfaction of the Monetary Order requested, under section 38 of the *Act*, is dismissed without leave to reapply.

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

As the Landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the Tenant, under section 72 of the *Act*. This claim is also 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?

To be awarded compensation for a breach of the *Act*, the Tenant must prove under section 67 of the *Act*, the following 4 factors:

- 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; and
- the Tenant acted reasonably to minimize that damage or loss.

It is the Tenant's burden of proof, on a balance of probabilities, as the applicant, to prove this claim, including the 4 factors, as noted above. I find that the Tenant failed to provide sufficient evidence regarding this claim. She simply stated she wanted \$541.00 for the rest of December money owed. She did not explain this claim in any detail, including any dates, calculations, or specific information. I repeatedly asked her if she wanted to add or explain anything regarding this claim during this hearing, and she refused. She did not even mention the exact amount of \$541.94, which was indicated in her application.

For the above reasons, the Tenant's application for a Monetary Order of \$541.94 for money owed or compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement, under section 67 of the *Act*, is dismissed without leave to reapply. The above amount was taken from the Tenant's online RTB dispute access site application details.

Is the Tenant entitled to a Monetary Order for the return of her security deposit?

Section 38(4) of the *Act* allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) 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, the landlord must either repay any security deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the *Act* states that if the landlord does not return the deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence before me, I find the Landlord was duly served with the Tenant's forwarding address on December 9, 2024, by email and December 30, 2024, by registered mail. I find that this tenancy ended on December 17, 2024.

I find that there is no evidence provided to show that the Landlord had the Tenant's agreement in writing to keep the security deposit. I find that there is evidence provided that the Landlord applied for dispute resolution on December 27, 2024, to retain a portion of the security deposit as required under section 38(1) of the *Act*, within 15 days of the end of tenancy date of December 17, 2024, the later date, as the Landlord received the Tenant's first forwarding address by email on December 9, 2024.

The Landlord's right to retain the Tenant's security deposit for damages only, was extinguished for failure to provide 2 written opportunities, one using an RTB approved form, under section 17(2)(b) of the *Regulation*, and to complete a move-out condition inspection report, as per section 36 of the *Act*. However, the Landlord applied for other claims aside from damages, including unpaid utilities, in her application. Even though I dismissed the Landlord's application for unpaid utilities above, the Landlord still claimed it, believed she was entitled to it, and pursued it at this hearing.

Under section 38(6) of the *Act*, I find that the Tenant is not entitled to receive double the amount of her security deposit.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of her security deposit, under sections 38 and 67 of the *Act*, in the amount of \$600.00 plus interest of \$6.24, totalling \$606.24.

Interest of \$6.24 is payable from August 25, 2024 to February 3, 2025, as per the online RTB deposit interest calculator. The Tenant provided a receipt in her evidence, showing that she paid a security deposit of \$600.00 to the Landlord on August 25, 2024, which I accept, as the Landlord did not provide evidence to the contrary. Neither party testified about this issue, at this hearing. The date of this hearing is February 3, 2025. Although the date of this decision is February 5, 2025, this is not within the control of either party.

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

As the Tenant was only partially successful in her application, I find that she is not entitled to recover the \$100.00 filing fee for her application from the Landlord. This claim under section 72 of the *Act*, is also dismissed without leave to reapply.

Conclusion

The Landlord's entire application is dismissed without leave to reapply.

I grant the Tenant a Monetary Order in the amount of **\$606.24** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of the security deposit plus interest, under sections 38 and 67 of the <i>Act</i>	\$606.24
Total Amount	\$606.24

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The remainder of the Tenant's application is dismissed without leave to reapply.

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 5, 2025

Residential Tenancy Branch