

DECISION

Introduction

This hearing was reconvened from a hearing on January 13, 2025 regarding the parties' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$2,550.00 for unpaid rent under section 67 of the Act; and
- authorization to recover the Landlord's filing fee from the Tenant under section 72 of the Act.

The Tenant applied for:

- compensation of \$6,725.00 for monetary loss or other money owed under section 67 of the Act;
- return of the security and/or pet damage deposit of \$2,550.00 under section 38 of the Act; and
- authorization to recover the Tenant's filing fee from the Landlord under section 72 of the Act.

I issued an interim decision on January 13, 2025. This decision should be read together with the interim decision.

The Landlord, the Landlord's wife MT, and the Tenant attended this reconvened hearing. The Tenant was assisted by an interpreter, FH. All attendees who gave testimony did so under oath.

Preliminary Matters

Service of Landlord's Additional Evidence

The Landlord provided proof that his additional evidence was emailed to the Tenant on February 12, 2025, as permitted in the interim decision. I find the Tenant to be sufficiently served with the Landlord's additional evidence.

Service of Tenant's Application

The Landlord submits that he did not receive a copy of the Tenant's notice of dispute resolution proceeding or evidence. The Landlord testified that the Tenant did not respond to his emails requesting the documents, and the last email that the Landlord received from the Tenant was from November 15, 2024.

I find the Tenant did not provide proof that he had served the Landlord with his notice of dispute resolution or evidence as required under the Act and the Rules of Procedure, whether before or after the first hearing, and as instructed in the interim decision.

Given the above, I find the Landlord was not properly served with notice of the claims in the Tenant's application, in particular, the Tenant's claim for compensation of \$6,725.00. I find the Landlord did not have an opportunity to submit evidence after first reviewing the Tenant's evidence, in order to properly respond to this claim. Therefore, even though the parties discussed this issue during the hearing, I dismiss the Tenant's claim for \$6,725.00 with leave to re-apply.

Since I find the Tenant's application was unable to be adjudicated due to the Tenant's lack of service, I dismiss the Tenant's claim for the recovery of his filing fee without leave to re-apply. I note that I would have also dismissed the Tenant's claim for the return of the security deposit with leave to re-apply, but I do not find it is necessary to do so because this claim will be addressed as part of the Landlord's application.

Additionally, given that I do not find the Tenant to have served the Landlord with a copy of his documentary evidence, despite having been given a second opportunity to do so following the first hearing, I have excluded the Tenant's documentary evidence from consideration for the purpose of this decision.

Landlord's Request for Utility Bill

During the hearing, the Landlord mentioned that the Tenant owed an outstanding utility bill. However, this item is not claimed in the Landlord's application, and the Landlord did not submit or serve an amendment application with sufficient time prior to the hearing, as required under the Rules of Procedure. Furthermore, I find this claim to be different from the unpaid rent claimed by the Landlord, and the Tenant did not agree to the amendment. Therefore, I have not addressed the Landlord's request in this decision. The parties may discuss this issue, and if they are unable to reach an agreement, the Landlord is at liberty to make an application to deal with this claim.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recover the filing fee?

Background and Evidence

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

This tenancy commenced on September 1, 2024. The rent was \$2,550.00 due in advance on the 30th day of each month. The Tenant paid a security deposit of \$1,275.00.

The Tenant paid the first month's rent, but did not pay the second month's rent due to the Landlord on September 30, 2024.

The Landlord submitted a direct request application after serving the Tenant with a 10 day notice to end tenancy for unpaid rent. The Tenant did not pay and did not dispute the notice. On October 23, 2024, the Residential Tenancy Branch granted the Landlord an Order of Possession of the rental unit (see file number on the cover page of this decision). The Landlord's claim for the unpaid rent in that proceeding was dismissed with leave to re-apply due to a service issue.

The Tenant moved out of the rental unit by the end of October 2024. The Tenant acknowledged that he did not give the Landlord his new address.

In his application, the Landlord seeks compensation of \$2,550.00 for the unpaid rent that was due on September 30, 2024, and to retain the security deposit.

According to the Tenant, there was no hot water in the rental unit, which was supposed to be in brand new condition. The Tenant stated that he later found out the Landlord did not have any permits from the city. The Landlord denied the Tenant's allegations.

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.

Is the Landlord entitled to compensation for unpaid rent?

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))

- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

In this case, I do not find the Tenant to have withheld rent for any of the permitted reasons described above. I find the Tenant did not pay for any qualifying emergency repair, as defined in section 33 of the Act, which the Tenant then deducted from the rent. Additionally, I find the Tenant has not obtained authorization from the Residential Tenancy Branch to reduce or deduct compensation from the rent due to problems with the rental unit.

I find it is undisputed that the Tenant did not pay rent of \$2,550.00 which was due in full to the Landlord on September 30, 2024. I note that a tenant's obligation to pay the overdue rent is not eliminated by the tenant moving out of the rental unit in accordance with the landlord's notice to end tenancy or an order of possession.

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.

Therefore, pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$2,550.00 for unpaid rent.

Is the Landlord entitled to retain the security deposit?

Under section 38(1) of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) 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,

unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

I find the Tenant did not serve the Landlord with a forwarding address, that is, a mailing address, in writing for the return of the security deposit. As such, I find the 15-day limit for the Landlord to return the security deposit or make an application has not been triggered.

I have found above that the Landlord is entitled to compensation from the Tenant exceeding the amount of the security deposit.

Under section 72(2)(b) of the Act, if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted from any security deposit due to the tenant.

Therefore, pursuant to section 72(2)(b) of the Act, I authorize the Landlord to deduct \$1,275.00 from the security deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

Is the Landlord entitled to recover the filing fee?

The Landlord has been successful in his application. I find the Landlord is entitled to recover the filing fee from the Tenant under section 72(1) of the Act.

Conclusion

The Landlord is authorized to retain the security deposit. Pursuant to sections 67 and 72(1) of the Act, I grant the Landlord a Monetary Order of **\$1,375.00**, calculated as follows:

Item	Amount
Amounts Payable by Tenant to Landlord	
Unpaid Rent due on September 30, 2024	\$2,550.00
Landlord's Filing Fee	\$100.00
Subtotal	\$2,650.00
Amount Payable by Landlord to Tenant	
Credit for Security Deposit	- \$1,275.00
Subtotal	- \$1,275.18
Net Payable by Tenant to Landlord	\$1,375.00

The Landlord must serve the Tenant with this Order as soon as possible. Consistent with the substituted service order dated November 1, 2024, and pursuant to sections 62(3) and 71(1) of the Act, I authorize the Landlord to serve the Tenant with a copy of this Order via email to the Tenant's email address stated on the cover page of this decision. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

The Tenant's claim for compensation of \$6,725.00 is dismissed with leave to re-apply due to lack of service. The Tenant is at liberty to make another application to address this claim. Leave to re-apply is not an extension of any applicable time limits.

The Tenant's claim for the return of the security deposit and recovery of his filing fee are dismissed without leave to re-apply.

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: March 17, 2025

Residential Tenancy Branch