

## **DECISION**

### **Introduction**

This hearing was convened as a result of the parties' applications for dispute resolution under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$1,200.00 for damage or loss under the Act, the regulations, or the tenancy agreement under section 67 of the Act;
- authorization to retain the security deposit of \$1,200.00 under section 38 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 \$1,200.00 for the return of the security deposit under section 38 of the Act; and
- authorization to recover the Tenant's filing fee from the Landlord under section 72 of the Act.

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

### **Service of Notice of Dispute Resolution Proceeding and Evidence**

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and initial evidence. The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package.

The Landlord submitted additional evidence, which the Landlord explained was a signed condition inspection report that she had given to the Tenant at the start of the tenancy, but did not include it in her evidence package. The Tenant did not recall having received this document.

The Landlord expressed that she did not receive any evidence from the Tenant. The Tenant's evidence consists of three RTB forms (#47, #41, and #40), which are related to the Tenant's request for the return of the security deposit. The Landlord confirmed that she received the Tenant's forwarding address in October 2024.

I find the parties did not serve each other with copies of the above-mentioned evidence (the Landlord's additional evidence and all of the Tenant's evidence) as required under the Rules of Procedure. However, given the parties' positions and as explained further below, I do not find anything in this dispute to depend on the evidence that was not served. As such, I do not find it is necessary to consider adjourning this matter and admitting the evidence under Rule 3.17 of the Rules of Procedure, and I have not referred to the parties' evidence that was not served.

## Issues to be Decided

Is the Landlord entitled to compensation for damage or loss under the Act, the regulations, or tenancy agreement?

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

The rental unit is the lower suite of a house. This tenancy commenced on September 1, 2023 for a fixed term ending on August 31, 2024. The rent was \$2,400.00 due on the first day of the month. The Tenant paid a security deposit of \$1,200.00.

According to the Landlord, the parties attended a move-in inspection of the rental unit and signed the condition inspection report. The Tenant did not recall having done so.

The Tenant moved out of the rental unit on or around September 30, 2024.

The Landlord received the Tenant's forwarding address on October 18, 2024 and made her application on October 29, 2024. The Landlord seeks compensation for:

Item	Amount
No Move Out Notice by Tenant <ul style="list-style-type: none"><li>Loss of one month's rent in October 2024 (\$2,400.00)</li><li>Place of stay for bathroom repair from September 4 to 7, 2024 (\$651.92)</li></ul>	\$1,200.00
Filing Fee	\$100.00
Cleaning	\$252.00
<b>Total</b>	<b>\$1,552.00</b>

### *The Landlord's Position*

The Tenant did not give the Landlord at least one month's notice before moving out. On September 7, 2024, the Landlord was at the property for repairs. The Landlord was told by another person residing with the Tenant that they were looking for a place and would be moving out. The Landlord said that she needed one month's notice. On September 9, 2024, the Tenant posted in the parties' group chat about moving out. The Tenant did not give a move-out date.

On September 29, 2024, the Landlord received a message advising that the Tenant had moved out and was asking where to put the keys. The Landlord said to put the keys in the laundry room. The Landlord attended the unit on October 1, 2024 and found the Tenant to be completely moved out. The unit was not clean, so the Landlord hired a cleaner. The Landlord submitted a cleaning receipt into evidence.

The Landlord had a hint that the Tenant might move out, so the Landlord put an ad up on September 9, 2024. However, only two people responded. The Tenant showed the unit to those prospective tenants, but the Landlord never heard back from them. In the end, the Landlord was unable to re-rent the unit until November 1, 2024 and lost one month's rent.

The bathroom floor broke in August 2024. The Landlord paid for the Tenant's alternative accommodations for three days (September 4 to 7, 2024) while she completed the repair. If the Tenant had told the Landlord that they were moving out, the Landlord could have waited for him to move out to do the repairs. The Landlord is not claiming the cost of the repairs.

### *The Tenant's Position*

The Tenant cleaned everything and left the unit clean. The Tenant moved the stove, cleaned behind the fridge, and cleaned the floor for the whole unit.

The Tenant and the other residents moved out because the Landlord accused them of breaking the bathroom floor. The repairperson hired by the Landlord determined that the cause of the damage was a leaking toilet. The repairs were completed before the Tenant moved out.

The Tenant messaged the Landlord in a group chat about moving out on September 7, 2024.

## **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 damage or loss under the Act, the 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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

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.

*Damages Due to Inadequate Move-Out Notice*

Under section 44(3) of the Act, if a fixed term tenancy agreement does not require the tenant to vacate the unit at the end of the fixed term (permitted in prescribed circumstances only), and the landlord and tenant do not enter into a new tenancy agreement, the parties are deemed to have renewed the tenancy agreement as a month-to-month tenancy on the same terms.

I find this tenancy was for a fixed term ending on August 31, 2024, with no requirement for the Tenant to vacate. As such, I find this tenancy became a month-to-month tenancy in September 2024.

A tenant may end a month-to-month tenancy by giving the landlord at least one clear month's written notice under section 45(1) of the Act. In order to be effective, a notice to end tenancy given by a tenant must be signed and dated, must give the address of the rental unit, and must state the effective date of the notice (see sections 45(4) and 52 of the Act). The effective date must be the day before the day in the month that rent is payable under the tenancy agreement.

Based on the evidence presented, I find the Tenant did not give the Landlord proper written notice to end the tenancy by September 30, 2024. I find there is insufficient evidence that the Tenant had given the Landlord a move-out date. I also note that WhatsApp or text messaging are not accepted methods of service under the Act.

I note that even if the Tenant had given the Landlord a proper written notice to end the tenancy any time in September 2024, to allow for at least one clear month's notice, the earliest date that the Tenant could have legally ended the tenancy would have been October 31, 2024. I find the Tenant did not give the Landlord proper or sufficient notice to end the tenancy as required under section 45(1) of the Act. I find the Tenant nevertheless vacated the rental unit by September 30, 2024.

According to Residential Tenancy Policy Guideline 3, if a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In this case, I accept the Landlord's evidence that despite having made efforts to find a new tenant since September 9, 2024, she was unable to fill the rental unit until November 1, 2024. I find the Landlord lost rent for October 2024 due to a lack of proper and sufficient notice given by the Tenant to end the tenancy.

I do not find the alternative accommodations paid for by the Landlord to be a loss that results from the Tenant's failure to give proper and sufficient notice. I am not satisfied that the Landlord could have reasonably delayed the bathroom floor repair by one month given the importance of the use of the facility to the Tenant and the Landlord's obligation to maintain and repair the property under section 32(1) of the Act. I dismiss the Landlord's claim for the cost of accommodations without leave to re-apply.

Based on the amount claimed by the Landlord in her application, I find the Landlord has set a cap of \$1,200.00 for her damages due to inadequate notice from the Tenant, and has waived any amount in excess of that cap. Therefore, I find the Landlord is entitled to compensation of \$1,200.00 for loss of October 2024 rent, as claimed.

### *Cleaning Fee*

When a tenant vacates a rental unit, the tenant must leave the rental unit "reasonably clean" (section 37(2)(a) of the Act).

I note the Tenant's testimony that he cleaned the entire unit before moving out. I further note that reasonable cleanliness does not require the rental unit to be perfectly or thoroughly clean.

I find the Landlord did not give sufficient details or submit evidence such as photos to prove that the rental unit was not left in a reasonably clean state. Therefore, I dismiss the Landlord's claim under this part without leave to re-apply.

### **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 Landlord received the Tenant's forwarding address in writing on October 18, 2024. I find the Landlord made her application within 15 days after receiving the Tenant's forwarding address. Therefore, I find the Landlord complied with section 38(1) of the Act, and the doubling provision in section 38(6) of the Act does not apply.

Additionally, I find the Landlord made claims against the security deposit that are not for damage to residential property. Therefore, I do not find that it matters whether the parties had participated in inspections and completed the condition inspection report, or whether the Landlord's right to claim against the security deposit for damage to residential property had been extinguished under the Act.

In light of the above, I find the amount found to be owing by the Tenant should be set off against the security deposit held by the Landlord, plus applicable interest.

The interest rate on deposits was 1.95% in 2023 and 2.7% in 2024. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to interest of \$35.18 on the security deposit from the date that the deposit was paid to the Landlord (July 17, 2023) to the end of the tenancy (September 30, 2024), calculated as follows:

2023 \$1200.00: \$10.77 interest owing (1.95% rate for 46.03% of year)  
2024 \$1200.00: \$24.41 interest owing (2.7% rate for 74.86% of year)

I find the total amount awarded to the Landlord in this decision exceeds the security deposit held plus the applicable interest (see calculations in the conclusion section below). Therefore, I authorize the Landlord to retain the security deposit in full under section 38(4)(b) of the Act.

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

As the Landlord was successful in her application, I find the Landlord is entitled to recover her filing fee from the Tenant under section 72(1) of the Act. I find the Tenant has not been successful in his application, and is therefore not entitled to recover his filing fee from the Landlord.

## Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

The Landlord is authorized to retain the \$1,200.00 security deposit. Pursuant to section 67 and 72(1) of the Act, I grant the Landlord a Monetary Order of **\$64.82**, calculated as follows:

Item	Amount
<b>Amounts Payable by Tenant to Landlord</b>	
Loss of October 2024 Rent due to Lack of Proper/Sufficient Notice Given by Tenant to End the Tenancy (Excess Above \$1,200.00 Waived by Landlord)	\$1,200.00
Landlord's Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$1,300.00</b>
<b>Amount Payable by Landlord to Tenant</b>	
Credit for Security Deposit	- \$1,200.00
Interest on Security Deposit	- \$35.18
<b>Subtotal</b>	<b>- \$1,235.18</b>
<b>Net Payable by Tenant to Landlord</b>	<b>\$64.82</b>

This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

The remainder of the amounts claimed by the Landlord is 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 9, 2025

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Residential Tenancy Branch