



DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit 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

This hearing also dealt with the Tenant's cross Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

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

The Landlord's Managing Broker and Agent P.V. attended the hearing for the Landlord. The Landlord is a corporation.

The Tenant L.V. attended the hearing for the Tenant.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of Notices of Dispute Resolution Proceeding and Evidence

Both parties affirmed that there were no issues with service of the Landlord's Notice of Dispute Resolution Proceeding, the Tenant's Notice of Dispute Resolution Proceeding and the evidence.

I find that both parties were duly served with the Notices of Dispute Resolution Proceeding and evidence in accordance with section 88 and section 89 of the Act.

Issues to be Decided

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

Is the Landlord entitled to a monetary order for the damage caused to the rental unit?

Is the Landlord entitled to retain the Tenant's security deposit or pet damage deposit in satisfaction of a monetary order?

Is the Landlord entitled to retain the filing fee?

Is the Tenant entitled to a monetary order for the return of the security deposit or pet damage deposit?

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.

Evidence was provided showing that this tenancy began on April 30, 2020, with a monthly rent of \$2,850.00, due on the first day of the month, with a security deposit in the amount of \$1,350.00, and with a pet damage deposit in the amount of \$1,350.00. The Landlord continues to hold the security deposit and the pet damage deposit in trust. The tenancy ended on November 30, 2024. The rental unit is the main suite of a detached house, and the Tenant rented the entire suite under the tenancy agreement.

The parties agreed that the forwarding address was received by the Landlord on December 1, 2024.

The Landlord's application requests for November of 2024's unpaid rent and compensation for accumulated late fees due to late payment of rent.

The Landlord's Managing Broker and Agent P.V. testified that the Tenant did not pay for November of 2024's rent, and that the Tenant owed the sum of \$2,850.00 for rental arrears. P.V. submitted a copy of a ledger, generated by the Landlord's accounting system. P.V. also referred to the written tenancy agreement, specifically clause 4.1, and stated that the Tenant accumulated \$449.99 for late fees due to late payment of rent. P.V. elaborated that the Tenant paid rent late on June, September, October, and November of 2024.

I will paste clause 4.1 from the written tenancy agreement below:

- 4.1 To pay rent as set out on the due date; and to pay for electricity, gas, water/sewer, telephone, internet and cablevision (if applicable). The Tenant shall also pay the Landlord an additional Twenty-five Dollars (\$25.00) NSF Fee for each payment which is returned to the Landlord due to there being insufficient funds in the account of the Tenant to cover such payment. The Tenant will also pay Twenty-five Dollars (\$25.00) Late Fee for each rent payment that is not delivered to the Landlord by the 1st of each and every month of this Tenancy Agreement.**

The Tenant declared that rent has been paid and that there are no arrears at the time of the hearing. The Tenant stated that the Landlord has retained the security deposit and the pet damage deposit without just cause. The Tenant requested for the return of double the security deposit and double the pet damage deposit.

The Tenant testified that they paid November of 2024's rent, the Tenant elaborated that their sister dropped off cash for November of 2024's rent at the Landlord's office during business hours sometime in late October of 2024.

Analysis

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

Section 26 of the Act states 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Based on the evidence, the testimony, and on a balance of probabilities, I find that the Landlord has established their claim that they are entitled to a monetary order for unpaid rent. More specifically, that the Tenant failed to comply with their obligation to pay rent for November of 2024, in so doing breaching section 26 of the Act and one of the terms of the written tenancy agreement.

I accept the Landlord's calculation of unpaid rent, demonstrated by their ledger evidence, to be in the amount of \$2,850.00.

While the Tenant claims to have indirectly paid for November of 2024's rent, when their sister dropped off the payment at the Landlord's office, I find this version of events unconvincing given the absence of any evidence to corroborate or support that such a payment occurred.

For example, the Tenant has not submitted any documentary evidence to support such a payment was made, witness testimony from the person who made the payment – their sister, or provided any meaningful submissions as exactly when this payment was made, other than it was done sometime in late October of 2024.

The Landlord's application for a monetary order for unpaid rent is granted. Under section 67 of the Act, I find that the Landlord is entitled to a Monetary Order, in the amount of \$2,850.00 for November of 2024's unpaid rent.

Is the Landlord entitled to a monetary order for the damage caused to the rental unit?

In this case, at the hearing the Landlord requested for a monetary order for the Landlord's loss due to the Tenant's late payment of rent, and non-sufficient fund fees under clause 4.1 of the tenancy agreement. However, the Landlord's application specifically requests for a monetary order due to the Tenant's breach of section 32 of the Act. For example, pasted below is the description provided by the Landlord on their application for this issue:

Amount requested:

\$449.99

Provide a complete list of the items you are requesting compensation for:

NSF / LATE FEES - REPAIRS

Section 32 of the Act states:

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

When considering the submissions at the hearing, section 32 of the Act, the application and its contents, I find that the Landlord has not provided any meaningful submissions to support that they are entitled to a monetary order based on section 32 of the Act, for damage caused by the Tenant to the rental unit.

The Landlord's application for a monetary order for damage caused to the rental unit is dismissed, without leave to reapply.

Is the Landlord entitled to retain the Tenant's security deposit or pet damage deposit in satisfaction of a monetary order?

Section 38(1) of the Act states that within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (c) repay a security deposit or a pet damage deposit with interest calculated in accordance with the regulations, or (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4)(b) of the Act states that a landlord may retain an amount from a security deposit or a pet damage deposit if after the end of the tenancy, the director orders that the landlord may retain the amount.

In this case, the parties agreed that the tenancy ended on November 30, 2024, and that the Landlord received the Tenant's written forwarding address on December 1, 2024. According to Residential Tenancy Branch records, and the Landlord's Notice of Dispute Resolution Proceeding, the Landlord's application was filed on December 16, 2024.

Based on the above, I find that the Landlord filed their application within 15 days after they received the forwarding address, and the tenancy had ended, in doing so complied with section 38(1) of the Act.

Given that the Landlord was found above to be entitled to a monetary order for unpaid rent, under section 38(4)(b) of the Act, I authorize the Landlord to retain the Tenant's entire security deposit, in the amount of \$1,350.00 and the pet damage deposit, in the amount of \$1,350.00, in partial satisfaction of the monetary order for unpaid rent.

Is the Landlord entitled to recover the filing fee from the Tenant?

As the Landlord was successful in their application, I find that they are entitled to the recovery of the filing fee, the sum of \$100.00, from the Tenant.

Under section 72 of the Act, I find that the Landlord is entitled to a monetary order in the amount of \$100.00, for the recovery of the filing fee.

Is the Tenant entitled to a monetary order for the return of the security deposit or pet damage deposit?

Section 38(6) states that if a landlord does not comply with section 38(1), the landlord (a) may not make a claim against the security deposit or the pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 38.1 of the Act allows a tenant to file an application requesting the return of the security deposit and the pet damage deposit.

As mentioned above, given that the Landlord complied with section 38(1) of the Act and was found to be entitled to retain the entire security deposit and the entire pet damage deposit to satisfy a monetary award, I find that this issue on the Tenant's application is no longer relevant. I further find that given the Landlord complied with section 38(1) of the Act, that the doubling provisions under section 38(6) of the Act are not applicable here.

The Tenant's application for the return of the security deposit and pet damage deposit is dismissed, without leave to reapply.

Conclusion

The Landlord's application for unpaid rent is granted.

The Landlord's application for damage or repairs is dismissed, without leave to reapply.

The Landlord's application to retain the security deposit, and pet damage deposit to satisfy a monetary award is granted.

The Landlord's application for the recovery of the filing fee from the Tenant is granted.

The Tenant's application for the return of the security deposit and the pet damage deposit is dismissed, without leave to reapply.

Section 72 of the Act allows amounts awarded to be set off from a security deposit or a pet damage deposit. In this case, both the deposits are applied to the monetary issue and the balance remaining is in the favour of the Landlord.

I grant the Landlord a Monetary Order in the amount of \$250.00 under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,850.00
authorization 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	-\$2,700.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$250.00

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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.

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 19, 2025

Residential Tenancy Branch