Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued under section 46 of the Act;
- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice) issued under section 47 of the Act;
- Compensation for monetary loss or other money owed;
- An order for the landlord to comply with the Act, regulation, or tenancy agreement; and
- Authorization to recover the filing fee for this Application from the landlord under section 72(1) of the Act.

This hearing also dealt with the landlord's Application under the Act for:

- An Order of Possession under section 55 of the Act based on the 10 Day Notice;
- Recovery of unpaid rent; and
- Authorization to recover the filing fee for this Application from the tenant under section 72(1) of the Act.

Tenant S.L.Z. attended the hearing for the tenant.

Agent L.S. attended the hearing for the corporate landlord.

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

The tenant acknowledged receipt of the landlord's Proceeding Package and evidence on March 20, 2025. No service concerns were raised. Although the landlord acknowledged receipt of a copy of the tenant's Application, they denied receipt of any other documents, evidence, or the Proceeding Package. Although the tenant stated that they served the landlord with all required documents in person on March 13, 2025, and

that the agent signed a proof of service form, a copy of this form was not submitted for my consideration. They also stated that they had not served any evidence.

I accept that the landlord was served with a copy of the tenant's Application in person on March 13, 2025. While I do not accept that the landlord was served with the tenant's Proceeding Package or the required information and fact sheets, as the tenant has not satisfied me on a balance of probabilities that they were, I find that their lack of service did not significantly prejudice the landlord. As the Applications were crossed, and the landlord already had the hearing information from their own Application, I find that they were aware of the date and time of the hearing, and how to attend, although the tenant did not serve them with this information. They also received all the fact sheets from the Residential Tenancy Branch (Branch) as part of their own Application. Finally, as they received a copy of the Application, I find that they were aware of the claims against them by the tenant.

As a result, I did not dismiss the tenant's Application, and accepted it for consideration. I also accepted the landlord's Application for consideration, as well as their evidence. No evidence was submitted by the tenant for my consideration except for copies of the 10 Day Notice and One Month Notice.

Preliminary Matters

The parties agreed that the matters relating to possession of the rental unit have been resolved, as the tenant has vacated the rental unit. The tenant therefore withdrew their claims for cancellation of the 10 Day Notice, cancellation of the One Month Notice, and an order for the landlord to comply with the Act, regulation, or tenancy agreement. The landlord also withdrew their claim for an Order of Possession.

Settlement

During the hearing, the parties settled some of their disputes with one another. Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order pursuant to section 64.2 of the Act. During this hearing, the parties reached an agreement about some of their disputes.

The parties agreed to the following terms of a final and binding resolution of some of their disputes, and they did so of their own free volition and without any element of coercion:

1. The parties agreed that the tenant owes the landlord $409.42 for the following things:
    1. $204.42 for Hydro;
    2. $100.00 for cleaning; and
    3. $105.00 for wall repairs.

Although the parties discussed the matter of utilities during settlement, they were only able to settle the utility claims related to Hydro. As the landlord did not claim for recovery of utilities in their Application, and the parties did not settle the matter of what is owed for Fortis, if anything, that matter remains unresolved. It has not been dealt with in this decision as part of the outstanding claims, as it was not claimed for by the landlord in their Application. The landlord therefore remains entitled to file a proper claim with the Branch seeking recovery of any other unpaid utilities, including but not limited to Fortis, should they wish to do so.

The remaining disputes between the parties that formed part of their respective Applications have been dealt with below.

Issues to be Decided

Is the tenant entitled to the $1,900.00 in compensation sought for monetary loss or other money owed?

Is the landlord entitled to recovery of $1,400.00 in unpaid rent?

Are the parties entitled to recovery of their respective filing fees?

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.

The tenancy agreement before me states that the six-month fixed term tenancy commenced on November 1, 2024, and has an end date of April 30, 2025. Rent was set at $1,400.00, and due on the first day of each month. The tenancy agreement states that only the following are included in the cost of rent:

- window coverings;
- fridge;
- stove;
- sewage disposal; and

- garbage collection.

There is a notation under section 3 of the tenancy agreement that the tenant is to pay 1/3 of utilities.

The parties agreed that these are the correct terms for the tenancy agreement but disagreed about what utilities the tenant is responsible for paying 1/3 of. They also agreed that the $700.00 security deposit and the $700.00 pet damage deposit, both of which were paid on October 25, 2024, are still held in trust by the landlord.

The parties agreed that the tenant vacated the rental unit on March 28, 2025, and that no rent was paid for March by the tenant. The tenant argued that they should not owe rent for March because:

- they were evicted,
- they had to look for a new place at the last minute;
- they could not afford to pay March rent and rent and a deposit for a new place;
- their rent has increased significantly at their new place; and
- they went through significant hardship at the rental unit, which is an illegal suite, due to noise.

The Agent disagreed stating that the tenant owes full rent for March as they did not have a lawful reason under the Act to withhold it, and had possession of the rental unit for the full month of March.

The parties agreed that move-in and move-out condition inspections were properly scheduled and completed. They also agreed that inspection reports were completed and provided to the tenant on the day of the inspections, and that the tenant provided their forwarding address in writing on the move-out condition inspection report from on April 1, 2025. However, the tenant took issue with the way in which the landlord’s agent completed the inspection forms.

The tenant sought the return of their deposits, or balance thereof, as well as $500.00 for moving costs. The tenant stated that they should be owed this compensation as they were forced to move at a cost of $750.00, and they do not agree with the notices to end tenancy that were issued. The Agent stated that the tenant should not be entitled to the return of their deposits as they owe the landlord the amounts agreed upon in settlement plus $1,400.00 in March rent. They also denied that the landlord was responsible for any moving costs, stating that the tenant was lawfully evicted.

Analysis

Is the landlord entitled to recovery of $1,400.00 in unpaid rent?

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, 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 following are the lawful reasons for which a tenant has the right under the Act to unilaterally deduct or withhold rent:

- the tenant overpaid rent because of an illegal rent increase;
- the landlord overcharged for a security or pet damage deposit, in which case the tenant was entitled to deduct the amount overpaid from their rent;
- the landlord refused the tenant's written request for reimbursement of emergency repairs completed and invoiced in accordance with section 33 of the Act;
- the tenant had, at the time the rent was withheld or deducted, the landlord's written permission allowing the rent reduction;
- the tenant had, at the time the rent was withheld or deducted, an order from the Branch allowing the rent to be reduced or withheld; or
- the tenant was served with a notice to end tenancy for landlord's use of property entitling them to one month's compensation by way of a rent reduction.

I am satisfied by the tenancy agreement before me and the testimony of the parties, that the tenant owed $1,400.00 in rent on the first day of each month under the tenancy agreement. At the hearing, the tenant acknowledged that they did not have any of the above noted lawful reasons for withholding March rent, and as a result, I find that they did not.

Based on the above, I find that the tenant owed $1,400.00 on March 1, 2025. While I appreciate the tenant's frustrations with what they describe as loss of quiet enjoyment, tenants who wish to seek a rent reduction or compensation for loss cannot unilaterally withhold rent for that purpose. They must file an Application with the Branch seeking those things, and continue to pay rent on time and in full until a decision is reached in relation to those claims. Further to this, the tenant was not exempt from owing rent simply because they were served with a notice to end tenancy, and in fact, was served one of the notices to end tenancy specifically because they did not pay their March rent as required.

As rent was due for March of 2025, and the tenant acknowledged failing to pay any rent for March, I therefore grant the landlord's claim for recovery of the $1,400.00 in rent owed for March of 2025.

Is the tenant entitled to the $1,900.00 in compensation sought for monetary loss or other money owed?

Although the tenant filed a single claim for compensation for monetary loss in the amount of $1,900.00, this amount includes the $500.00 sought for moving costs and recovery of the $1,400.00 in deposits paid by the tenant to the landlord. I have therefore addressed these claims separately.

Although the tenant sought $500.00 for moving costs, I dismiss this claim without leave to reapply. The tenant was served with two separate notices to end tenancy, and while they disputed them both, they chose to vacate the rental unit instead of waiting for a decision from the Branch about their validity. Had they waited for the hearing, and had the notices been cancelled, they would not have had to vacate the rental unit at all.

While the tenant continued to argue that the notices were invalidly issued, I am satisfied that conclusive presumption under section 47(5) of the Act applies. The tenant acknowledged at the hearing that they received the One Month Notice off their door on February 24, 2025. Under section 47(4) of the Act, the tenant therefore had until March 6, 2025, to file the Application seeking its cancellation. The tenant did not file their Application seeking cancellation of the One Month Notice until March 7, 2025, which is late. Further to this, they did not seek an extension under section 60 of the Act to the time limit set out under section 47(4) of the Act. Section 47(5) of the Act states that if a tenant who has received a notice under section 47 of the Act does not make an application for dispute resolution in accordance with subsection 4, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

As the tenant did not file their Application disputing the One Month Notice on time, and neither sought nor were granted an extension to the time limit set out under section 47(4) of the Act, I therefore find that the tenancy ended on March 31, 2025, by way of conclusive presumption. Even if the tenancy had not ended under section 47(5) of the Act, the tenant acknowledged receiving the 10 Day Notice off their door on March 4, 2025, and failing to pay any rent for March. They also acknowledged that none of the lawful reasons for withholding rent under the Act apply. As a result, I find that the tenancy would nevertheless have ended as a result of the 10 Day Notice, despite the

tenant having disputed it on time, as they did not pay the rent as required, the 10 Day Notice is in the proper form, and the tenant did not have a lawful reason to withhold the rent. I make these findings under sections 62(2) and 62(3) of the Act, even though the matter of possession of the rental unit is already resolved, and the parties withdrew their respective claims in relation to cancellation or enforcement of the One Month Notice and 10 Day Notice.

Based on the above, I find the tenant's arguments that they were unlawfully evicted by the landlord to be without merit. As a result, I dismiss their claim for moving costs for having been unlawfully evicted without leave to reapply.

I will now turn to the matter of the tenant's claim for return of their security and pet damage deposits. I am satisfied that neither party extinguished their rights in relation to the deposits. The tenancy ended by way of conclusive presumption on March 31, 2025, and the tenant provided the landlord with their forwarding address in writing on April 1, 2025. As a result, I find that the landlord has until April 16, 2025, to either return the deposit to the tenant, or file a claim against it, under section 38(1) of the Act. The tenant's claims for recovery of their security deposit and pet damage deposit were therefore filed prematurely.

However, the parties agreed under section 63 of the Act that the tenant owes the landlord $409.72 and I have found above that the tenant also owes the landlord $1,400.00 in outstanding rent for March of 2025. Section 72(2)(b) of the Act states that if a tenant is ordered to pay an amount to their landlord as part of the dispute resolution process, that amount may be withheld from any security or pet damage deposit due to the tenant.

I am satisfied that the landlord currently holds $1,410.85 in trust for the tenant. This includes the $1,400.00 initially paid on October 25, 2024, plus the $10.85 in interest accrued as of today's date. Pursuant to section 72(2)(b) of the Act, I therefore grant the landlord authorization to withhold the $1,410.85 currently held in trust as a security deposit and pet damage deposit, in partial satisfaction of the $1,809.42 owed by the tenant to the landlord. The remaining balance owed of $398.57 must still be paid by the tenant.

Are the parties entitled to recovery of their respective filing fees?

Recovery of the filing fee is at my discretion. As the tenant was not successful on any of their claims, I decline to grant them recovery of their $100.00 filing fee from the landlord

under section 72(1) of the Act. As the landlord was successful in at least a portion of their claims, I grant them recovery of their $100.00 filing fee from the tenant under section 72(1) of the Act.

Conclusion

Pursuant to sections 64.2 and 67 of the Act, I grant the landlord a Monetary Order in the amount of **$498.57** under the following terms:

Monetary Issue	**Granted Amount**
unpaid March 2025 rent	$1,400.00
recovery of the filing fee	$100.00
amount agreed to under section 63 of the Act	$409.42
less the security and pet damage deposit retained	-$1,410.85
Total Amount	**$498.57**

The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** by the landlord as soon as possible. Should the tenant fail to comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than $35,000.00.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2025

Residential Tenancy Branch