DECISION

Introduction

This hearing dealt with cross applications including:

The Tenant's January 28, 2025, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for $10,000.00 in compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's March 7, 2025, Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for $25,000.00 in unpaid rent under section 67 of the Act
- a Monetary Order for $759.10 in 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

This hearing proceeded by written submissions only. No sworn testimony was received by either the named Tenant or the named Landlord in this dispute.

The reasons for why the merits of this cross application is being determined based only written submissions, are provided in a March 31, 2025, Decision from the Assistant Director.

My responsibility in this cross application is to consider the merits of the respective claims as required by RTB Rule of Procedure 6.1.

In addition to the parties' general rights and obligations to make claims and serve evidence on the other, I generated a specific list of questions for both parties that was distributed to them in writing on April 4, 2025. This was done in accordance with my discretion under RTB Rule of Procedure 6.19 to provide the parties with a facilitated opportunity to clearly identify the relevance of their documentary evidence to their individual claims.

Parties were provided with 5 days to generate their written response and return them to the RTB, which I can confirm where provided by the Tenant, on April 8, 2025, and the Landlord on April 9, 2025.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties indicated in their written submissions that they received Notice of the other's claims for compensation.

Service of Evidence

The Tenant writes that they served their evidence on the Landlord on March 23, 2025, by email, which the Landlord confirms they received.

The Landlord writes that they served the Tenant by email which the Tenant indicates they received on March 10, 2025.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order for $10,000.00 in compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Is the Tenant authorized to recover the filing fee for this application from the Landlord under section 72 of the Act

- Is the Landlord entitled to a Monetary Order for $25,000.00 in unpaid rent under section 67 of the Act
- Is the Landlord entitled to a Monetary Order for $759.10 in damage to the rental unit or common areas under sections 32 and 67 of the Act
- Is the Landlord authorized 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

Background and Evidence

I have reviewed all documentary evidence provided by the parties but will refer only to what I find relevant for my decision.

Regarding the residential property, the parties agreed that:

- The residential property is single-detached house with three separate suites with distinct civic addresses.
- The residential property has been owned by the named Landlord since 2010.
- The Landlord retained possession of the top rental unit during this tenancy.
- The Tenant occupied the middle unit.
- The bottom unit has been occupied by a separate tenant, who the Landlord indicates has been there since 2019.

Regarding the tenancy agreement between the parties, both sides provided a copy of the custom written tenancy agreement dated May 13, 2024, that:

- Was signed on May 12, 2024
- Also signed on May 15, 2024
- Confirms the tenant paid a $2,500.00 security deposit
- Confirms that rent was $5,000.00 a month, due on the first day of the month.
- Set the rental term as a fixed term from July 1, 2024, through to July 1, 2025

The parties agreed that there is no current agreement for return of the Tenant's security deposit.

The Landlord wrote in their submission, that they had previously advertised the unit at $5,200.00 monthly rent but agreed to this tenancy at the lower rate because the Tenant was friends with the Landlord's wife.

The Tenant agreed they were friends with the Landlord's wife and wrote in their submission that they had "originally wanted to rent only for 6 months" but did not dispute that they signed a fixed term 12-month tenancy agreement.

As shown in their written submissions, the parties agreed that the Tenant duly paid $5,000.00 each of the seven (7) months between July 2024 and January 2025.

The Landlord also wrote that the Tenant paid an additional $2,500.00 for early occupancy in June 2024, with the Tenant agreeing that they first occupied the rental unit on June 16, 2024.

The parties agreed that this fixed term tenancy ended early, but disagreed about how it ended, and the timeline by which it ended:

- The Tenant claimed they notified the Landlord on September 30, 2024, that they would be vacating early, and that they officially vacated November 30, 2024.
- The Landlord referred to an October 5, 2024, text they received from the Tenant indicating that they would be moving, and the Landlord referred to other documentary evidence to argue that the Tenant continued to retain possession of the rental unit through January 31, 2025.

The Tenant in their April 8, 2025, submission explained their claim for financial compensation by describing it as the return of $5,000.00 rent paid for December 2024 and $5,000.00 rent paid for January 2025, arguing that their tenancy was constructively terminated and their rights to quite enjoyment under section 28 of the Act were violated by the Landlord:

> No formal breach notice was ever issued regarding my dog, Lucy. I was met with indirect, passive-aggressive complaints from neighbors, which created an emotionally hostile and uncomfortable living environment. I made every effort to resolve the issue—first temporarily rehoming Lucy, then putting her in full-time doggy daycare—but the emotional toll and ongoing discomfort contributed significantly to my decision to

[redacted]

> leave.

The Tenant also wrote this in their April 8, 2025, submission:

> **2. Was a written Notice provided by the Tenant that they were vacating?**
> No formal written notice was given. I provided **verbal notice on October 1, 2024**, which was **acknowledged and confirmed by the landlord in a text message**.

In contrast, the Landlord is claiming compensation for unpaid rent of $25,000.00 for the five months between February 2025 and July 1, 2025, when this fixed term tenancy was to have ended as per the terms of the written tenancy agreement. The Landlord cited the following policy guideline as justification for their claim:

Applicable Legislation & Guidelines

- Under ***RT Guideline 30 E,*** a tenant may not end a fixed-term tenancy early without the landlord's consent unless permitted under the Act (e.g., Family Violence provision under **RT Guideline 30 H,** which is not applicable here).
- **Policy Guideline 4** (Liquidated Damages) confirms that Ms. [redacted] must fulfill their financial fixed-term commitments unless there is a significant breach or mutual agreement to end early. **Tenant agreed to Clause 9, 29 & 30 of our Tenancy Agreement binding our agreement to RTA.**

The Landlord denies violating the Tenant's right to quiet enjoyment in the rental unit and highlighted what the find to be the Tenant's changing reasons for having ended this tenancy early, by writing on April 9, 2025:

> Ms. [redacted] unilaterally breached the fixed-term tenancy agreement without establishing any material breach or statutory ground on my part to warrant early termination. The reasons she has cited—an alleged verbal agreement, informal text communications, concerns regarding marketing, emotional discomfort, pet-related issues, and a personal desire to relocate—are either unsubstantiated or legally insufficient under the Residential Tenancy Act to justify termination.

The parties agreed that the Tenant was given specific permission to have a "puggle named Lucy" at the rental unit, and that no pet damage deposit was collected for this pet.

The parties were asked to clarify their expectations regarding a pet in the rental unit:

> 5. Can both parties please summarize their expectations or entitlements under the act, regulations regarding the Tenant's pet during this tenancy? A pet damage deposit does not appear to have been collected. Please also provide a timeline of when the Tenant's dog was present at the rental unit.

The Tenant did not respond to this question with a precise timeline, and only wrote that in August 2024, the Landlord "made it clear he was uncomfortable with the situation" and so the Tenant wrote that they took Lucy to doggy day care for a period before rehoming the dog with her ex-husband, who then seemed to return the dog back to the Tenant.

In contrast, the Landlord specifically provided the following response:

> **5. Expectations Regarding Pet**
>
> Permission for the dog was granted based on assurances it was well-behaved and would be crated when unattended. Neither condition was consistently met. The dog had behavioural issues and was not regularly crated. On multiple occasions, the sound of a dog running throughout the unit was clearly audible through the ceiling of the Ground Floor unit when the tenant was not present in the premises.
>
> ---
>
> **6. Pet Deposit and Timeline**
>
> No pet damage deposit was collected. The dog was present throughout the tenancy. No eviction or removal was requested. The other tenant reported no issues with the dog **(See Exhibit I)**. The unit, [redacted], provided a fenced, secure backyard, easily accessible directly from the suite for the dog, and a dog-friendly park was across the street.
> **(See Exhibit O – 3rd Page – 3rd Row – Backyard access from 2nd floor)**

The parties were also asked to provide submissions regarding efforts to re-rent the unit occupied by the Tenant, once it became apparent that this tenancy would be ending early.

The parties appear to agree that the Landlord sought compensation from the Tenant for the costs of using a professional rental agency to re-rent the unit. The Tenant denied

this request from the Landlord, and wrote in their submission of how the Landlord has not yet re-rented the unit.

The Tenant appears to have denied responsibilities for any costs associated with the Landlord securing a new tenant, claiming that the Landlord keeps changing the listing price and availability for the rental unit.

In contrast the Landlord provides the following regarding their efforts to re-rent the unit:

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9. Efforts to Re-Rent the Unit

Efforts to mitigate loss in accordance with RTA Section 7(2) and Policy Guideline 5:

- I retained VLR **(See Exhibit Q)**
- VLR advertised on 8+ platforms with professional photos: VLR, Craigslist, Zumper, Zillow, Padmapper, Realtor.ca, Facebook Marketplace, MLS **(See Exhibit N & O)**
  Tenant claims listing was not broad enough; **Exhibit N** proves otherwise.
- Strategic decision made to rent [redacted] & [redacted] to expand market exposure, understanding we might need to move into [redacted] if [redacted] rented first. The strategy worked—[redacted] **is rented as of May 1, 2025, and we will move into [redacted], further mitigating losses.**

The above noted addresses have been blanked out for privacy but should be read as, the Landlord successfully rented their upper-level unit from May 1, 2025, and the Landlord will be occupying the unit previously occupied by the Tenant.

The Landlord subsequently updated their financial claim to reduce it from the original $25,000.00 because they mitigated their losses and secured replacement tenants:

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10. New Tenant for [redacted]

- March 30, 2025: New tenant secured for [redacted]
- My wife and I will relocate to [redacted] effective May 1, 2025, to mitigate loss

Rent Loss Claim:

• Feb–Apr 2025:	$5,000 x 3 = $15,000
• May–June 2025 shortfall:	$800 x 2 = $1,600*
Total:	$16,600

* The fact that I will be occupying the unit does not relieve Ms. [redacted] of her financial obligations under the fixed-term tenancy agreement. **Pursuant to RTA s. 45 (2)b** the fixed-term tenancy is binding for the full term. I am entitled to recover lost rent for the remainder of the term. My own occupancy of the unit does not negate the economic loss incurred, as I would have otherwise secured a qualified tenant at the advertised fair market rate of $4,200. Ms. [redacted]'s early termination has therefore resulted in a direct and measurable loss of $800/month.

5

Regarding the Landlord's $759.10 claim for compensation for damage as written in their application:

> The Tenant left nails, hooks and holes in walls in the unit. The nails and hooks will need to be removed, and the resulting holes need to be patched up and repainted. The Landlord received a repair quote in the amount of $359.10. There

is water damage on a bolster on a side window. The Landlord estimates it will cost $400 to repair.

The Tenant denied responsibility for this claim and argued in their written submissions that the Landlord did not conduct a move-in condition inspection when this tenancy started.

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 as required by RTB Rule of Procedure 6.6.

I find that the parties' claims for compensation in these cross applications are interrelated because they both appear to have resulted from the fixed term tenancy that is the subject of this dispute, ending early.

Is the Tenant entitled to compensation for monetary loss or other money owed?

The Tenant is asking for the refund of rent they paid for December 2024 and January 2025, arguing that they ended their tenancy for justifiable reasons, and that they vacated the rental unit as of November 30, 2024.

The Landlord disagreed and is requesting compensation for full losses associated with this tenancy because they signed a fixed term 12-month agreement with the Tenant but only received 7 months of rent for the term of this agreement.

I do not include the portion of rent paid for early occupancy in the above statement.

As seen in section 45(3) of the Act, tenants are required to identify a material breach in a tenancy agreement and provide specific Notice to the Landlord requiring that they fix the breach by a specific time, and if the breach is not addressed, then the tenant could be entitled to end a fixed term tenancy early with no financial penalty.

More information about the legal framework for fixed term tenancies can be found in RTB Policy Guideline 30 and more information about what the RTB considers "material terms" under the Act can be found in RTB Policy Guideline 8.

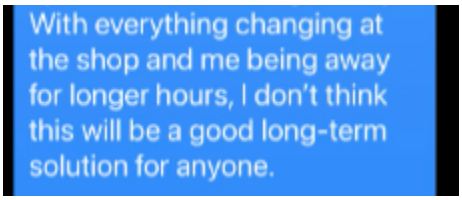
Specific to the dispute in front of me, the Tenant agrees that they did not provide written Notice to their Landlord that they would be ending this tenancy early, let alone provide written Notice to the Landlord as required by 45(3) of the Act, advising them of any documented breach of a material term.

I therefore find that the Tenant's explanation as written in their April 3, 2024, submission in response to the Landlord's RTB Application for compensation, does not excuse the Tenant from their own obligations under the Act:

> It's also been claimed that I never provided written notice. While this is technically true, the landlord never asked for one. Given our long-standing and friendly relationship, I believed that verbal notice was acceptable. Had I been asked for written confirmation, I would have provided it immediately.

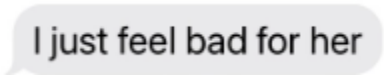
Regarding the Tenant's alleged reasons for ending this tenancy early, I reviewed the Tenant's evidence of text message conversations between them and the Landlord back on October 4, 2024, after the Tenant indicated they would be vacating. From doing so, I find that the Landlord documented their efforts to find solutions to maintain the tenancy, which would have included the Tenant's dog remaining at the residential property.

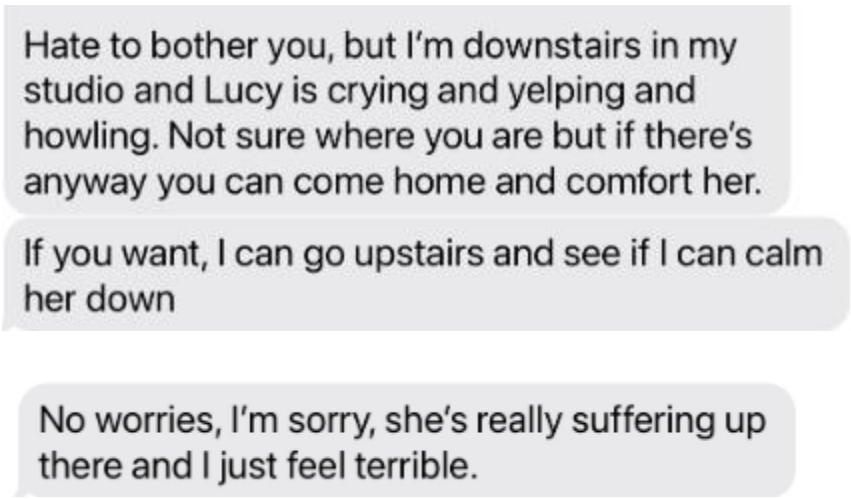
However, as seen in the Tenant's evidence, they responded to these efforts by stating:



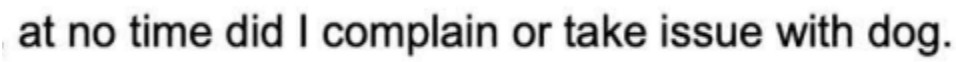
I find that this acknowledgement from the Tenant, from their own evidence, in addition to the Landlord's documentary evidence of written submissions from the tenant in the lower unit (exhibit I), confirm that the Tenant had their own reasons for ending this tenancy, unrelated to the their dog, and unrelated to any actions of the Landlord, or the tenant in the lower floor unit.

Specifically in response to the Tenant's allegations that the Landlord was opposed to the dog at the rental unit, and was hostile to the Tenant, I note the following responses from the Landlord to the Tenant, as seen in their Tenant's own evidence, regarding the dog:

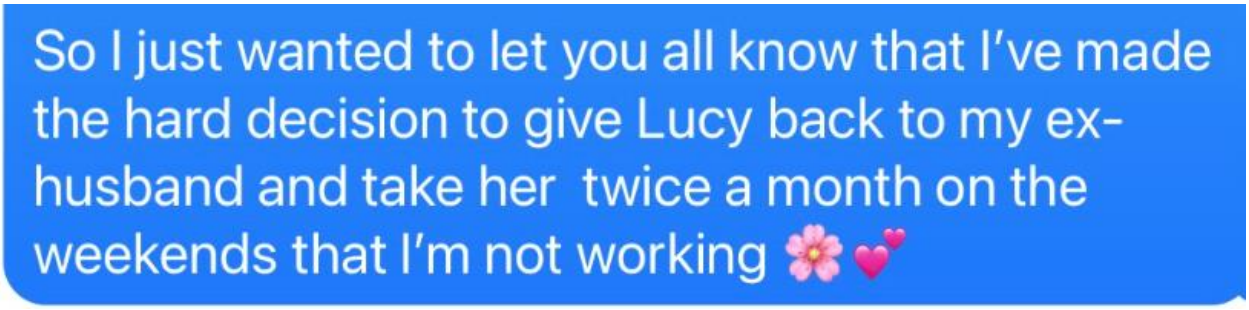




I find that these example communications do not depict rudeness or intimidation from the Landlord, only concern for the Tenant's dog. The Landlord also submitted a written statement from the lower unit tenant, where this tenant writes:



Lastly, as noted in the Tenant's evidence of text message communication provided to the RTB, they documented on August 16, 2024, to the Landlord and other occupants of the residential property:



And yet, the Tenant remained in the rental unit through to October 2024 before communicating to the Landlord that they would now be vacating.

I therefore find that the Tenant failed to end their tenancy under 45(3) of the Act, because as seen above, their own evidence shows that:

- The other occupants of the residential property (Landlord and lower unit tenant) had compassion for the dog,
- The Tenant was not willing to work with the other occupants of the residential property for a better solution for the dog,

    - This means that the Tenant did not attempt to mitigate their own losses as required by 7(1) of the Act and 45(3) of the Act.
- The Tenant ended the tenancy early for their own reasons.

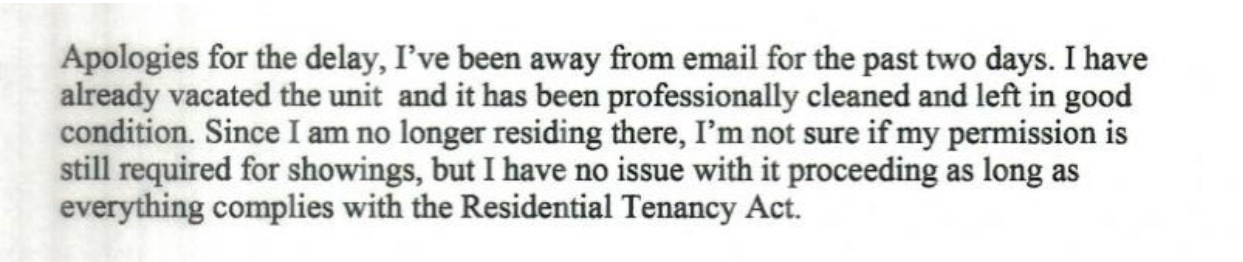
As seen in section 7(1) of the Act, this means that the Landlord is entitled to financial compensation due to the Tenant breaking the fixed term tenancy early, because:

> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I also find it relevant to consider the parties' conflicting evidence over when the Tenant in this dispute returned possession of the rental unit.

The Tenant alleged that they vacated November 30, 2024, however, the Landlord provided their Exhibit 30 from the tenant in the lower unit of the residential property, who reported the presence of the Tenant at the rental unit in December 2024 and January 2025.

In addition to the above, the Landlord provided evidence of a January 31, 2025, email from the Tenant to the Landlord where they write:


Apologies for the delay, I've been away from email for the past two days. I have already vacated the unit and it has been professionally cleaned and left in good condition. Since I am no longer residing there, I'm not sure if my permission is still required for showings, but I have no issue with it proceeding as long as everything complies with the Residential Tenancy Act.

The Landlord also provided complete proof of text messages with the Tenant during December 2024, to confirm that the Tenant continued to receive packages to the rental unit during the time.

I subsequently find that the Tenant's payment of rent for these months could be considered payment made for possession, as is typically expected in exchange for payment of rent under the Act.

I find for clarity that this tenancy ended on January 31, 2025, under 44(1)(d) of the Act, which reads:

> 44 (1)A tenancy ends only if one or more of the following applies:
>
> ---
>
> (d)the tenant vacates or abandons the rental unit;

I also note, from reviewing these text messages, that the Tenant previously applied to the RTB on January 16, 20225, requesting that the RTB declare this tenancy as "frustrated" under the Act.

I refer both parties to RTB Policy Guideline 34 for more information on what a frustrated tenancy is under the Act.

In sum, I therefore dismiss the Tenant's claim for return of rent as submitted in this application, and do not give leave to reapply.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I have already documented my findings that it was appropriate for the Tenant to pay the Landlord rent for December 2024 and January 2025. The Landlord updated their claim for financial compensation and is now asking the Tenant to pay rent for the three months of February – April 2025 ($15,000), as well as the difference in rent between May and June $1,600.00).

I find that the Tenant accurately pointed out that the Landlord's entitlement to this portion of the claim is contingent on whether they appropriately mitigated losses as required by 7(2) of the Act, which reads:

> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As seen in the Landlord's April 9, 2025, submission, regarding efforts to re-rent the unit, they report the following, which I find generally corresponds with the Tenant's own timeline submissions:

- **Timeline of Rental Rate Adjustments, pricing and listings:**
  - **Oct 16:** Re-listed with VLR at $5,250 **(Exhibit A)**
  - **Oct 22:** Encouraged Tenant to share listing **(Exhibit M)**
  - **Oct 24:** Reduced to $5,000 **(Exhibit E)**
  - **Nov 12:** Reduced to $4,250 due to low-demand winter season **(Exhibit F)**
  - **Jan 17:** Briefly adjusted to $6,000 for film client **(Rental Rate Adjustments)**
    Unique Digs (UD), a subsidiary of VLR, advised of a film industry client seeking a short-term 2-month rental at a budget of $6,000/month. UD advised to raise listing rate to match client-specific opportunity. VLR mistakenly increased rate to $5,800. UD noted discrepancy, requested correction to advised rate of $6,000. VLR advised correction couldn't be made over the weekend and would be made Monday Jan 20.
  - **Jan 20:** VLR updated the listing to $6,000 as instructed
  - **Jan 22:** UD's film client advised they decided on a two-bedroom unit.
  - **Jan 23:** The listing rate reduced to $4,800
    Six-day pricing adjustment made solely in response to UD client, not reflective of broader pricing strategy. Notably, net income from $6,000 rental—after ½ month's agent commission—would be $4,500/month, $500 less than $5,000 monthly rent received under Ms. [redacted]'s lease.
    Short-term film industry rental rates are higher than long-term rental rates.
  - **Mar 25:** Rate reduced to advertise "Promotional Rate $4,200 to end of June" **(Exhibit H)**

The Landlord provided comprehensive evidence exhibits (see exhibit 22 – 24) that document their specific efforts (as shown above) to list the rental unit, which include a multi-page email from their leasing agent which summarizes their professional efforts to relist the Tenant's unit as available for rent.

I therefore find that even though the Tenant violated the Act by communicating to the Landlord, without merit that they would be ending the fixed term tenancy early in October 2024, the Landlord promptly responded by listing the rental unit as available for rent at the same rate they originally listed it for when this Tenant signed the original fixed term tenancy agreement in May 2024.

The Landlord also provided comprehensive evidence from prior to this tenancy starting to confirm that the rental unit had been originally listed at $5,250.00 a month, with them writing in their Exhibit B:

May 02, 2024 – Original Listing Price: $5,250.00
The unit was initially listed at $5,250. We received simultaneous interest from two parties, VLR applicant and Ms. [redacted]. The other enquiry was vetted by VLR—and willing to pay $5,250 and wanting a two-year term. I declined VLR's recommendation and accepted Ms. [redacted] application, despite her not being vetted through their process. That good-faith decision, unfortunately, has directly contributed to the challenges I now face.

Based on our friendship, I offered Ms. [redacted] my unit at a reduced rate of $5,000 and confirmed there would be no rent increase for two years. She was very happy and remarked that the location was better and the price lower than her last place.

I therefore find that the Landlord satisfied their obligations under RTB Policy Guideline 5 as well as section 7(2) of the Act as shared above.

I also note that the parties agreed the Landlord offered to the Tenant on October 4, 2024, by text that he would release the Tenant from the fixed term tenancy agreement, if they would pay the costs of securing a new tenant through a local luxury rental agency. However, as shown in the Landlord's Exhibit C-1, the Tenant declined.

I therefore confirm my previous finding, that the Tenant failed to mitigate their own losses related to this tenancy, contrary to the requirements of section 7(2) of the Act.

I also note that the Tenant wrote in their April 8, 2025, submission, that they were:

> was not allowed to sublet or post the listing myself.

However, I find that the Tenant provided no documentary evidence to support this claim.

I therefore find that the Tenant failed to establish on the balance of probabilities that the Landlord violated any section of the Act, Regulation, or Tenancy agreement, such as but not limited to, the example of subletting as claimed and illustrated in RTB Policy Guideline 19.

This means that I find that the Landlord is entitled to compensation for losses associated with the premature end of fixed term tenancy agreement, and as noted above, I found that this tenancy ended on January 31, 2025, under 44(1)(d) of the Act.

I refer back to the Landlord's specified legal justification for their claim as I consider an appropriate financial award for rental losses and that they are requesting both:

- Liquidated damages and
- Lost rent

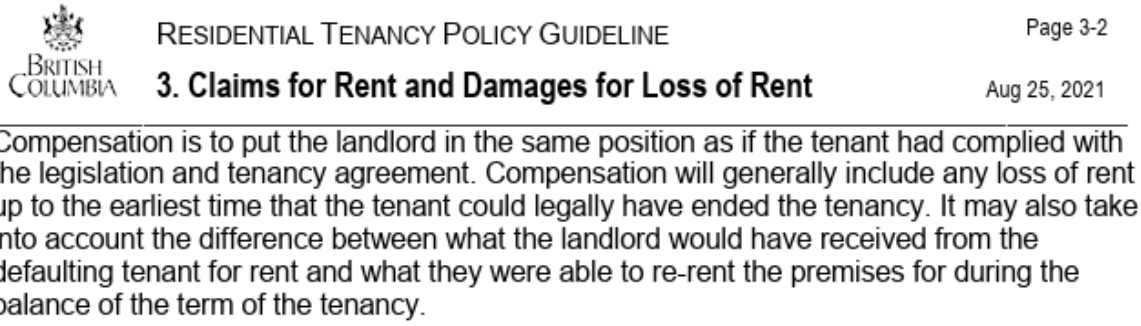
As seen in RTB Policy Guideline 4:

> A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

I find that this part of the Landlord's request is consistent with their documented request that the Tenant pay the Landlord's costs for retaining the services of a professional agency for securing a replacement tenant. And as noted, the Tenant rejected this request.

The Landlord also cited RTB Policy Guideline 30 as justification for their $16,600.00 claim for rent they wrote, that they could have otherwise expected to receive under the terms of this tenancy agreement.

However, the proper reference is RTB Policy Guideline 3, which I refer to now for guidance related to the Landlord's claim for loss of rent.



BRITISH COLUMBIA

RESIDENTIAL TENANCY POLICY GUIDELINE

Page 3-2

3. Claims for Rent and Damages for Loss of Rent

Aug 25, 2021

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. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

Specific to the dispute in front of me, I find that the Landlord did not include a liquidated damages clause in their custom tenancy agreement and so I find that the Tenant's documented action in breaking this fixed-term tenancy agreement early, did not activate any automatic clause for compensation.

I also find that the Landlord's clauses 28 and 53 of their written tenancy agreement could be read as efforts to contract out of the Act, which is contrary to section 5 of the Act.

Additionally, I find that reasonable prospective tenants in the surrounding urban municipality where this rental unit is located, were likely confused and made doubtful of the availability of Tenant's rental unit, first advertised in October 2024, due to how frequently the price and other specifics of this advertisement were changed and relisted before the Landlord made the decision to advertise the upper level unit and occupy the Tenant's unit instead.

I therefore find it appropriate to award the Landlord with additional compensation, above the monies already paid by the Tenant, for the partial month of February 2025 in the amount of $2,500.00 because I find that a landlord in an urban environment should otherwise expect to find a replacement tenant within a 4-month period.

I calculate 4 months between October 16, 2024, to February 15, 2025.

The Landlord is entitled a $2,500.00 monetary order for rent under section 67 of the Act.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

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:

- 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
- the landlord acted reasonably to minimize that damage or loss

These requirements are outlined in RTB-Policy Guideline 16.

I reviewed the Landlord's Bulk Evidence document that was submitted when this application was filed and find that they submitted a professional estimate in the amount of $359.10 for painting and patching services because the Tenant appears to have hung various items on the walls of the rental unit during this tenancy.

I note that clause 21(a) from the signed tenancy agreement, appears to be the Landlord's justification for this claim, as it is written:

Tenant Improvements

21. The Tenant will obtain written permission from the Landlord before doing any of the following:

a. applying adhesive materials, or inserting nails or hooks in the walls or ceilings other than two small picture hooks per wall;

However, based on the Landlord's photos provided, I find that they failed to document on the balance of probabilities, that the Tenant's actions in hanging items within the rental unit, represented more than regular wear and tear as permitted by 32(4) of the Act.

I therefore dismiss this portion of the Landlord's claim and do not give leave to reapply.

The Landlord also submitted photographic evidence of a cushion before the tenancy, and after the tenancy to allege that the cushion became waterlogged during this tenancy.

However, I note that the Tenant claimed in their written submission that the Landlord allegedly failed to conduct either a move-in or a move-out condition inspection, as required by the Act, when this tenancy started or ended.

I therefore find that the Landlord failed to establish on the balance of probabilities that the Tenant caused the water damage and also failed to demonstrate that the water damage was caused contrary to the Act, regulations or tenancy agreement.

I find that the Landlord failed to satisfy the 4-part test for damages and so I dismiss their application for compensation for losses for damage to the rental unit or common areas under sections 32 and 67 of the Act, without leave to reapply.

Is the Landlord entitled to retain all or a portion of 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.

I previously found that this tenancy ended on January 31, 2025.

I find that the Tenant wrote in their April 8, 2025, Decision, that they have not yet served their Landlord with Notice of their forwarding address because they wrote:

- I did not formally serve a forwarding address. We were on **friendly terms**, and I didn't anticipate needing to.

The Landlord appears to have become aware of the Tenant's forwarding address indirectly through this dispute resolution, and so I use my discretion under 71(2)(c) of the Act to deem the Landlord served with Notice of the Tenant's forwarding address in my writing of this decision.

I find that the Landlord is entitled to retain the full value of this $2,500.00 security deposit as compensation for money owed at the end of the tenancy under 38(3)(b) and 38(4)(b) of the Act because I have found in this decision, that the Landlord is entitled to a $2,500.00 monetary Order for rent.

I therefore order under section 72 of the Act that the Landlord is entitled to retain the full value of the Tenant's security deposit as full and final compensation for losses associated with this tenancy.

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

The Tenant was unsuccessful in this application and so I dismiss their request for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act, without leave to reapply.

Conclusion

The Landlord is entitled to retain the full value of the Tenant's security deposit as full and final compensation for rental losses associated with this tenancy.

The Landlord's application for compensation for losses for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

The Tenant's application for a Monetary Order for 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 Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act 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: April 22, 2025

Residential Tenancy Branch