

DECISION

Introduction

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

- a Monetary Order for 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

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

- a Monetary Order for unpaid rent under section 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

Tenant S.S. attended the hearing for the Tenant.

Landlord A.F. and Landlord Z.F. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties agreed that they received one another's Proceeding Packages through registered mail. Therefore, I find the Proceeding Packages properly served per section 89 of the Act.

Service of Evidence

The Landlord confirmed receipt of the Tenant's evidence through registered mail and that they had enough time to review it. Therefore, I find that it was served per section 88 of the Act.

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Preliminary Issues

Vacant Claim

The Tenant's claim for a monetary order was made simply in response to the Landlord's claim. In effect the Tenant was only claiming that they did not owe the Landlord one month of rent. As this issue is handled in my analysis of the Landlord's monetary claim, I am dismissing the Tenant's claim as a moot issue.

Issues to be Decided

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

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

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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.

Both parties agree the tenancy began on August 1, 2022. The rent at the end of the tenancy was \$2,100.00 due on the first day of the month. The Tenant gave the Landlord a \$975.00 security deposit which the Landlord still holds.

Both parties submitted an email chain between the Landlord and the Tenant. The information relevant to this dispute is:

- December 31, 2024: The Tenant gives the Landlord notice they are ending the tenancy agreement on January 31, 2025. The Landlord replies stating the Tenant is obligated to give the Landlord two months written notice under the tenancy agreement. The Tenant replies again thanking the Landlord for their reminder and states the tenancy agreement will be ending on February 28, 2025.
- January 21, 2025: The Tenant states that the term in their tenancy agreement requiring that they give two-month notice is invalid. The Tenant claims their original notice ending the tenancy agreement on January 31, 2025, allows them to end their tenancy on that date. They state that they want a move-out condition inspection on January 31, 2025.
- January 22, 2025: The Landlord claims that the two-month notice requirement in the tenancy agreement is valid and that the Tenant's first notice was invalid. The Tenant replies stating their previous email was correct and their tenancy would end on January 31, 2025. The Landlord replied and stated that they have already accepted their written notice ending the tenancy on February 28, 2025.

- January 23, 2025: The Tenant restates their position regarding the tenancy's end date. They request to schedule the move out condition inspection on January 31, 2025. They also give the Landlord their forwarding address..

Both parties agree that on January 31, 2025, at 11:00 am the Tenant conducted a moveout inspection on their own. The Tenant also vacated the rental unit on January 31, 2025.

At the hearing the Landlord testified they conducted the move-out inspection on their own on February 2, 2025.

In their written submissions the Tenant states the Landlord originally advertised the rental unit for March 2025. However, after the Tenant's email on January 21 they began advertising the rental unit for February. The Landlord gave the same account in their testimony.

The Residential Tenancy Branch's records show the Landlord made their application on February 13, 2025.

Analysis

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.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for February 2025.

Both parties during their correspondence make several mistakes regarding the Act so I will take a moment to clarify relevant aspects of the law. First, to give a simplified explanation, section 45 of the Act gives tenants the right to end a periodic tenancy by giving their landlord one month's written notice. A tenancy agreement cannot alter that right, and section 5 of the Act explicitly voids any attempts to do so.

Had the Tenant ignored the Landlord's response to their first December 31, 2025, and moved out in accordance with their first notice I find they would not have owed the Landlord any rent.

However, in response to the Landlord's reply the Tenant gave a second notice to end tenancy with the end date of February 28, 2025. The question becomes which of the Tenant's notices was a valid and enforceable notice.

Promissory estoppel (henceforth referred to as "estoppel") is an equitable doctrine from the common law. Estoppel prevents a party from enforcing a legal right when they have made a promise to the other party not to exercise said legal right. The defence of

estoppel requires the following be proven: (1) the parties be *in a legal relationship* at the time of the promise or assurance; (2) the promise or assurance be *intended* to affect that relationship and to be acted on; and (3) the other party in fact *relied* on the promise or assurance.

The question before me is whether the Tenant's right to end the tenancy based on their first notice was estopped, due to the second notice. I find the Tenant was estopped for the following reasons.

First, I find the parties are in a legal relationship, the tenancy agreement. Second, I find the Landlord relied on the second notice. I base this on how the parties agree that the Landlord originally posted the rental unit for rental starting in March 2025. I find this shows the Landlord's strategy to advertise the rental unit, initially relied on the Tenant's statement that they would stay until the end of February. Finally, there is the Tenant's intent. By stating the tenancy ended on February 28, 2025, I find that they gave a promise that they intended the Landlord to act on. The Tenant had full knowledge of the facts, i.e. that the first notice was given and what was stated in the Landlord's second email. I note that full knowledge of the law is not required for estoppel to apply.

Therefore, I find the Tenant was estopped from enforcing their right under the first notice. This would not have stopped the Tenant from re-asserting their legal right and issuing a new one-month notice, however they could not use the first notice, as the Landlord had relied on their withdrawal.

Given the Tenant abandoned the rental unit without giving a valid written notice I find the Tenant has breached the Act. The potential loss resulting from this breach is the rent for February 2025, which the Tenant would have paid had the Tenant given the Landlord one month written notice as required under the Act. The Landlord is required to take reasonable efforts to minimize their loss. I find that they did this by attempting to rent the rental unit when they became aware the Tenant intended to breach the tenancy agreement on January 21.

Therefore, I find the Landlord has established they suffered a loss of \$2,100.00 due to the Tenant abandoning the tenancy without giving them one month's notice.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$2,100.00.

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.

In this case I find the tenancy ended after the forwarding address was given to the Landlord on January 23, 2025. I find the tenancy ended on January 31, 2025, due to the Tenant abandoning the tenancy by stating unequivocally in writing that they would vacate the rental unit on this date.

As the tenancy ended on January 31, 2025, and the Landlord made their application on February 13, 2025, I find that the Landlord made their application within 15 days of the tenancy ending.

I find the Landlord's right to the security deposit was not extinguished. Under section 35 (2) of the Act a landlord has the right to perform an inspection on their own if the Tenant abandons the rental unit. Section 36 (2) also makes it clear that a Landlord's right to retain the security deposit is not extinguished for not fulfilling their obligations regarding a condition inspection if the rental unit was abandoned.

As I previously found the Tenant owes the Landlord compensation, I order the Landlord may retain the security deposit in partial satisfaction of the award. I find there was a \$975.00 security deposit, and that the tenancy began on August 1, 2022, as these facts are not in dispute. An additional \$46.81 for the interest would have accrued according to the formula in section 4 of the *Residential Tenancy Regulation*.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security and pet damage deposits of \$1,021.81, in partial satisfaction of the monetary award.

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

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

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

As the Tenant was not successful in this application, 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.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$1,178.19** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,100.00
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	-\$1,021.81
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$1,178.19

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.

I dismiss the Tenant's entire application 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