



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear linked applications.

The Landlord's **February 12, 2025** Application for Dispute Resolution under the Act is for:

- A Monetary Order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- An authorization to retain all or a portion of the security deposit, under section 38;
- An authorization to recover the filing fee for this application, under section 72.

The Tenant's **March 12, 2025** Application for Dispute Resolution under the Act is for:

- An Order for the Landlord to return the security deposit, pursuant to section 38;
- An authorization to recover the filing fee for this application, under section 72.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledges service of the Proceeding Package and is duly served in accordance with the Act.

The Tenant acknowledges service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issues to be Decided

Is the Landlord entitled to compensation from the Tenant for loss under the Act, regulation, or tenancy agreement?

Is the Landlord entitled to retain any portion of the security deposit? Or should any portion of the security deposit be returned to the Tenant? Is the Tenant entitled to double the security deposit under section 38(6)(b) of the Act?

Is either party authorized to recover their filing fee from the other party?

Facts and Analysis

Both parties agree that this tenancy started on May 1, 2024, with a fixed term until April 30, 2025. The rent was \$1,950.00 due on the first day of each month, and the Tenant paid a security deposit in the amount of \$975.00 on March 25, 2024. There was a disagreement regarding the end of tenancy date, flowing from a further disagreement on what ended the tenancy.

What ended the tenancy?

Both sides acknowledge that the Tenant wrote a notice to end tenancy (titled 'Notice to Move Out') dated November 28, 2024. I have reviewed this notice, and I conclude that it complies with the requirements for a tenant's notice to end tenancy under sections 45 and 52 of the Act. The effective date of this notice is January 31, 2025.

However, matters are complicated because the parties also signed a mutual agreement to end tenancy (the standard form, #RTB-8 was used). The mutual agreement to end tenancy is dated December 11, 2024, and lists an effective date of 1:00 PM on January 28, 2025 – an amendment to the effective date as seen on the previous notice to end tenancy from the Tenant. I observe that this document was accompanied by another document dated December 1, 2024, but signed by the Tenant on December 11, 2024. This document is drafted with the corporate Landlord's company letterhead, seemingly a template, with some blanks filled out by the Tenant and notes "I understand I am breaking lease. (mutual agreement to end)." Interestingly, the vacate date on this letter

is January 31, 2025, which is inconsistent with the end of tenancy date as seen on the accompanied mutual agreement form.

The Tenant's position is that the mutual agreement ended the tenancy and overrides the previous notice to end tenancy that was unilaterally issued by the Tenant. The Landlord's position is that the purpose of the mutual agreement was only to absolve the Tenant from some obligations such as the loss of rental income and only supplements the original notice to end tenancy as issued by the Tenant.

I must first make a finding on the circumstances that ended the tenancy, as this will influence the rest of the decision.

As discussed at the hearing, I will consider what ought to have been reasonably contemplated by the parties when entering into the mutual agreement to end tenancy. Unfortunately, specific terms were not included in this mutual agreement, and there is ambiguity on what this agreement entailed in terms of rights and obligations relating to the fixed term as well as the parking incentive discount.

Based on the evidence and testimony of both parties, I conclude on the balance probabilities that the Tenant vacated the rental unit on January 28, 2025, and that the move-out condition inspection and return of the keys occurred on the following day. These events seem to align more with the mutual agreement effective date rather than the original notice from the Tenant. Also, based on the Landlord's testimony, there was an intention to release the Tenant from certain obligations – I also note that the Residential Tenancy Branch public website regarding mutual agreement to end tenancy discusses the fact that Landlords can not apply for compensation that they may have been entitled to if a tenant ended the fixed-term early.

Overall, I conclude that I cannot set aside the mutual agreement to end tenancy, and this is what ultimately ended the tenancy – even if the origin of the intention was from the Tenant's notice. Thus, the tenancy ended on January 28, 2025.

Is the Landlord entitled to compensation from the Tenant for loss under the Act, regulation, or tenancy agreement?

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

The Landlord has claimed three separate sub-claims in their Monetary Order worksheet, each of which were discussed at the hearing. I have assessed them below:

Liquidated damages - \$975.00

The Landlord has explained how they interpreted the ending of the tenancy – that the Tenant was the one who ended the tenancy prior to the end of the fixed term. Based on this, the Landlord points to term #3 of the tenancy agreement (Liquidated Damages) from the additional terms section, which states:

“Without prejudice to any other remedies available to the Landlord, if the Tenant ends the tenancy prior to the end of the term of the Tenancy Agreement, or is in breach of the Residential Tenancy Act or a material term of the Tenancy Agreement that causes the Landlord to end the tenancy prior to the end of the term of the Tenancy Agreement, the Tenant will pay to the Landlord the sum of \$975.00 as liquidated damages. Such liquidated damages are an agreed pre-estimate of the Landlord's cost of re-renting the Premises and must be paid in addition to any other amounts owed by the Tenant to the Landlord. The Tenant will also be responsible for any rent remaining due during the remainder of the term of the Tenancy Agreement, until the Premises are re-rented. Landlord will take all reasonable steps to ensure the Premises are re-rented as soon as possible in order to mitigate any damages for breach of the Tenancy Agreement by the Tenant.”

As discussed at the hearing, I must consider the wording of the term, which implies that the Tenant must be the one who ended the tenancy in order to be held to the obligation to pay the liquidated damages. In this case, I have concluded that the tenancy ended because of a mutual agreement. However, this is not the sole consideration. I have also considered the fact that the current established norms in British Columbia entail the usage of a mutual agreement form to end a tenancy where a tenant is to be released from obligations relating to fixed terms – this is such an established practice that it is currently published on the public website as of the date of this decision. Furthermore, there was certainly a contemplation of release of at least some obligations pertaining to the fixed term by the Landlord.

For all these reasons, I conclude that the Tenant was indeed released from this specific term of the tenancy agreement regarding liquidated damages because the parties agreed to mutually end the tenancy. This claim is dismissed without leave to reapply.

Moving fee - \$200.00

The Landlord argues that the Tenant owes \$200.00 for the move-out fee, as per term #13(c) from the tenancy agreement additional terms because this amount is charged to the Landlord by the strata. I have reviewed the term, and I observe the \$200.00 charge listed, although this section appears to lack any mention of any strata by-law as the origin of the cost. The Tenant argues that they were never made aware of any strata by-laws, especially any concerning this cost.

The Landlord is relying on Residential Tenancy Regulation 7(1)(f) which allows a non-refundable move-in or move-out fee to be charged by a landlord when the fee is charged by a strata corporation to the landlord.

However, the Landlord has not provided any evidence of the fee being charged or paid, nor have they provided any proof that the strata by-law exists and is applicable to this tenancy. I conclude that the Landlord has not reasonably met their burden of proof to establish the value of their loss, as required in the legal test described above. Thus, I dismiss this claim without leave to reapply.

Incentive repayment - \$800.00

Both parties described how, at the outset of the tenancy, there was a separate "Incentive Addendum" which details how the agreement by the Tenant to a 12-month lease resulted in a rental incentive of 8 months of free parking for 1 stall, valued at \$800.00 (\$100.00 for each month). I note that this parking surcharge is not included in the monthly rent.

As discussed at the hearing, I have observed some language in the Incentive Addendum that is very similar to what I observed in the Liquidated Damages clause – specifically, that the Tenant ending the tenancy allows for the Landlord to recoup the incentives/discounts. I have already determined that the tenancy ended because of a mutual agreement.

However, the language of the term should not be the sole consideration. I find that such an incentive must be assessed differently than the liquidated damages clause, because the "loss" incurred by the Landlord begins right at the outset of the tenancy, when the discount starts, which is before the mutual agreement to end the tenancy. The essence of the incentive, as agreed by the parties, entails a financial reward (discount) for the agreement to fulfil a 12-month fixed term. The Tenancy ended after 9 months of the

tenancy, meaning that the Tenant enjoyed the discount of 8 months but did not complete the 12-month term. To be able to renege on their side of the bargain would be against the principles of fairness inherent in their agreement, and unlike the liquidated damages, I do not believe that the mutual agreement to end tenancy could reasonably contemplate the surrender of the Landlord's rights regarding the incentive.

Thus, I conclude that a fair resolution to this issue is that the Tenant shall pay back a portion of the discount that they enjoyed which shall be adjusted to capture the duration of the fixed term that was fulfilled. The tenancy lasted for 9 out of the 12-month fixed term, or 75% of the fixed term. Thus, the Landlord should receive 25% of their incentive back from the Tenant – representing the portion of the fixed term that the Tenant did not fulfil. I award the Landlord \$200.00 for this claim.

Is the Landlord entitled to retain any portion of the security deposit? Or should any portion of the security deposit be returned to the Tenant? Is the Tenant entitled to double the security deposit under section 38(6)(b) of the Act?

Based on the testimony from the parties, the tenancy ended on January 28, 2025, because of the mutual agreement to end tenancy dated December 11, 2024.

The Landlord still holds the \$975.00 security deposit which they collected on March 25, 2024.

Both parties complied with the requirements relating to the move-in and move-out condition inspections, specifically, the arrangement and participation portions. I note that, even in the absence of compliance from the Landlord, they still would have retained the right to make these claims against the security deposit as their claims do not relate to damage to the rental unit.

Section 38(1) of the Act indicates 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 (c) repay any security/pet damage deposits with interest in accordance with the regulations, or (d) make an application for dispute resolution claiming against the security/pet damage deposits.

Both parties agree that the Tenant first provided their forwarding address in November 2024, earlier than the date that the tenancy ended. I have determined that the tenancy ended on January 28, 2025, as per the mutual agreement to end tenancy dated December 11, 2024. The Landlord made their lawful claim against the security deposit

on February 12, 2025, which is within 15 days after the date that the tenancy ended. The Landlord was not unlawfully withholding the security deposit. Thus, the Tenant's claim for double the deposit is dismissed without leave to reapply.

I authorize the Landlord to retain \$300.00 of the security deposit against the claims they have established in their dispute application. The remainder, which is \$698.92 when including accrued interest, must be returned to the Tenant.

Is either party authorized to recover their filing fee from the other party?

I award the Landlord with their filing fee to be recovered from the Tenant, and I have contemplated this in my analysis of the security deposit.

The Tenant's claim was dismissed, and the Landlord was not retaining the security deposit unlawfully, thus they are not entitled to recover their filing fee from the Landlord.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$698.92** under the following terms:

Monetary Issue	Granted Amount
Security deposit, including accrued interest	\$998.92
Landlord's established claims	-\$200.00
Landlord's filing fee	-\$100.00
Total Amount	\$698.92

I grant a Monetary Order to the Tenant **in the amount of \$698.92**. The Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Small Claims Court of British Columbia 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 *Residential Tenancy Act*.

Dated: May 22, 2025

Residential Tenancy Branch