

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 or utilities 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 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
- the return of the Tenant's security deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord RS, his wife CC and daughter BC along with witness PM attended the hearing.

Tenant VE likewise attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Tenant VE testified that she was not served the Notice of Dispute Resolution but was given a courtesy copy by the Residential Tenancy Branch by email.

I find that Landlord RS was served on March 16th, 2024, in person. The Landlord acknowledged such service.

Preliminary Matters

Despite the failure to serve the Notice of Dispute Resolution, the Tenant consented to having the Landlord's application heard together with her own application. The hearing therefore proceeded on both applications.

Issues to be Decided

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

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

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

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

Is the either party entitled to recover the filing fee for this application from the other?

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 September 1st, 2024, with a monthly rent of \$1,700.00, due on first day of the month, with a security deposit in the amount of \$850.00 and a pet damage deposit in the amount of \$250.00.

RS testified that the Tenants owed an amount for a Fortis bill incurred at the end of the tenancy and submitted the relevant bill.

BC and PM both testified and swore to the truth of the contents of their statements. BC in her statement and in cross-examination stated that she was inside the Landlord's house, and heard a loud noise followed by another noise. She looked out and saw the Tenant looking at something on the ground. After the Tenant made a call, she left. BC then went out and saw the broken fascia on the ground.

PM in his statement said that VE had repeated difficulty getting her vehicle into the small

RS testified that he has not yet repaired the fascia.

VE testified that she was parking a truck with a camper on the back of it, into a small parking spot between two houses. She testified that she had tapped the fascia on a couple occasions when she was learning to park in the spot.

VE testified that during September and October, she was unable to park in the parking spot because the previous tenant had damaged the evestrough, such that the evestrough was obstructing the parking spot. The evestrough was only fixed in November. While the parking spot was unavailable, VE had to park on the street, one to three blocks away.

VE testified that she vacated the house on January 26th, 2025, and that the Landlord reoccupied the rental unit on that date, rather than on January 31st.

VE also testified that for September and most of October, 2024, she did not have use of the parking place on the residential property, and she had to park on the street, generally a block to three blocks away.

VE testified that neither a move-in nor a move-out inspection was completed.

Analysis

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

Based on the evidence before me, I find that the Landlord has established a claim for unpaid utilities owing for the end of the tenancy. The Tenant does not dispute the amount claimed.

The Landlord submitted the utility bills, and I have verified that the amount claimed reflects the proportional period the tenancy covered. The Tenant did not dispute that they were responsible for the utilities, and I award the Landlord the amount claimed.

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 utilities under section 67 of the Act, in the amount of \$186.14.

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

Section 35 of the Act establishes 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

I find, on a balance of probabilities, that the Tenant caused the damage to the fascia. The Tenant admits contacting the fascia with her vehicle on other occasions; and the evidence of BC was clear and compelling that the Tenant in fact broke the fascia on the occasion in question. The Tenant's denial was unconvincing.

However, the Landlord testified that the repairs have not been completed and I therefore find that the Landlord's loss has not crystallized, and the Landlord has not proven the amount of the loss. The Landlord is free to reapply when repairs have been completed and the cost has been determined.

Therefore, I dismiss the Landlord's claim for damage to the rental unit, with leave to reapply.

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

To be awarded compensation for a breach of the Act, the Tenant 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 Tenant claims amounts related to the failure to provide a parking spot for part of the tenancy; for part of January for which she paid rent but the Landlord reoccupied the rental unit; and for loss of income due to stress and time spent preparing for this hearing resulting from the Landlord's actions.

I shall deal with these claims in reverse order. Firstly, time spent preparing for a hearing does not constitute a loss. Secondly, the Tenant has not demonstrated that the clients she cites were unable to be rescheduled, and that she in fact suffered a loss in this respect. I therefore find that the Tenant cannot recover for this claim.

When rent is paid, it entitles the renter to occupy the premises for the period covered, subject to some limitations under the Act. In this instance, however, the Tenant

surrendered occupancy of the rental unit prior to the end of the month. I find that the Landlord did not violate the Act or tenancy agreement by reclaiming possession of the rental unit at this point. Further, I find that the Tenant has not proven any loss or damage caused by the Landlord's actions.

Finally, with respect to the parking space, the Landlord conceded that the parking spot was not available for approximately two months. Under section 27 of the Act, the Landlord cannot restrict a facility without reducing rent commensurately, and under section 65 of the Act, the appropriate remedy is a reduction in rent for the period. I do not agree with the Tenant's submissions that the value of a parking spot should be assessed on a square-footage basis. Parking is not living space, and its value as an amenity is lower than living space. I find that an appropriate value of an outdoor parking space is \$50.00 per month.

Therefore, I find the Tenant is entitled to a Monetary Order for a reduction of rent under section 65 of the Act, in the amount of \$100.00.

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

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. If a landlord fails to do so, they must pay the tenant double the amount of the deposit. The Tenant provided their forwarding address on January 28th, in response to the Landlord's request. The Landlord made their application on January 31st. I therefore find that the Landlords made their application within the 15 days permitted.

I accept the Tenant's testimony that the Landlord did not complete a condition inspection report at the beginning or end of the tenancy, and therefore that the Landlord's right to claim against the deposit for damage to the rental unit has been extinguished. However, the Landlord's claim is not solely for damage to the rental unit; it is also a claim for unpaid utilities. I find, therefore, the Landlord has met the requirements of the Act in respect of the security deposit, and it is not to be doubled.

However, the pet damage deposit is only permitted to be applied to pet damage, as is clear from the definition of pet damage deposit in the Act. The Landlord has not made a claim in respect of pet damage. I therefore find that, under section 38(6) of the Act, the Landlord is obligated to pay double the amount of the pet damage deposit to the Tenants.

I note that Policy Guideline 17 indicates that only interest on the original deposit is payable; it is not to be doubled. However, Policy Guidelines are not binding upon me, and in this instance, I find the Guideline to be in error. The terms "security deposit" and

“pet damage deposit” as used in section 38 would make little sense if interest were not considered as part of the deposits. If interest were excluded from the meaning of deposits under s.38(6), no interest at all would be payable when the deposit is doubled, even though the Landlord had been obliged to return the deposit with interest under section 38(1), which would be a perplexing result. Moreover, the parallel section 38.1(2) indicates that interest is calculated on an “amount” which is the doubled deposit, not the original deposit.

I therefore find that the Landlord is liable to return the Tenant’s security deposit in the amount of \$850.00, plus interest; and to return double the Tenant’s pet damage deposit in the amount of \$500.00, plus interest. The interest on the security deposit I calculate in accordance with the Regulations to be \$10.61. The interest on the doubled pet damage deposit I calculate to be \$6.24.

Under section 72 of the Act, I allow the Landlord to retain the Tenant’s damage deposit to the extent necessary to satisfy the monetary awards granted.

Is the either party entitled to recover the filing fee for this application from the other?

As each party was substantially successful on their own application, each party would ordinarily be entitled to recover their filing fee; however, the amounts cancel each other out, and each party shall therefore bear their own costs.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$1,180.71** under the following terms:

Monetary Issue	Granted Amount
(less) a Monetary Order for unpaid utilities under section 67 of the Act	-\$186.14
a Monetary Order for damages or loss under section 67 of the Act	\$100.00
return of the Tenant's security deposit and pet damage deposit due under section 38 of the Act	\$1,366.85
Total Amount	\$1,180.71

The Tenant is provided with this Order in the above terms and 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 Provincial Court of British Columbia (Small Claims Court).

The Landlord's application for a Monetary Order for damage to the residential property is dismissed, with 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: May 14, 2025

Residential Tenancy Branch