

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 under section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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

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
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant was served with the Landlord's Proceeding Package in accordance with section 89(2) of the Act.

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Service of Evidence

The Tenant acknowledged that they were served with the Landlord's evidence. I find that they were sufficiently served for the purposes of section 71 (2)(b) the Act.

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Issues to be Decided

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

Is the Landlord 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 a security and/or pet damage deposit?

Is the Tenant entitled to the return of their security and/or pet damage deposit?

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 recover the filing fee for this application from the Tenant?

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 validity of the tenancy agreement signed by the Tenants in December 2024 is in dispute. The monthly rent indicated on the tenancy agreement was \$1,800.00. Whether or not the Landlord received a security deposit is also in dispute.

Landlords' Application

On February 7, 2025, the Landlord applied for dispute resolution, seeking compensation in relation to unpaid rent, loss of rental revenue, and authorization to retain the Tenants' security deposit.

January Rent

The Landlord said that he and the Tenants entered into a tenancy agreement commencing January 1, 2025. KW signed the agreement on December 7, 2024, and RP signed it on December 15, 2024.

KW notified the Landlord via email on December 23 that they no longer wished to proceed with the tenancy on the basis that it was too small for them and suggested that the Landlord proceed to find another Tenant for January 1. She provided a copy of this email.

During the hearing, KW added that it was on December 24 that she learned that she would not be receiving any government funding to assist her with her move. She said that without this assistance it would not have been feasible for her to relocate to the rental unit.

The Landlord said that he was unable to find another renter for January 1, adding that he had only been notified on Christmas eve, which he said was on very short notice and that it was especially difficult to find another renter during the holiday season. The Landlord explained that under term 14 of the tenancy agreement, the Tenant was required to provide at least one month written notice. This meant that a notice received the day before rent is due on a given month would end the tenancy at the end of the following month. Accordingly, the Landlord said that the Tenants' notice to end the tenancy in December ended the tendency for the end of January.

The Tenants disagreed with the Landlord's assertion that they should be obligated to provide payment for the month of January for several reasons.

First, the Tenants questioned the validity of the tenancy agreement, saying that the tenancy agreement they received only included four pages, and that it should have included an additional two pages.

The Landlord replied that the copy of the tenancy agreement he provided to the Tenants was a complete copy with all six pages, and that this was provided to KW in person during their December 7 meeting. He said that he only forwarded to RP those pages which required signatures or initials, emphasizing that the tenancy agreement used is the standard Residential Tenancy Branch form and the other two pages includes only standard terms.

The Tenants also argued that they should be relieved from their obligations under the tenancy agreement, alleging that the Landlord had deceived them into entering into the agreement. Specifically, KW said that the Landlord had advertised the rental unit as being 2100 square feet when in fact it was only half that size. The Tenant said that as a result of the place being somewhat smaller than advertised, she subsequently determined that she would be unable to afford the rental unit as she would also need to rent a storage space for many of her belongings which would not fit.

The Landlord admitted that the square footage indicated in the advertisement was not an accurate representation of the actual square footage, though he explained that he had been including the square footage of a front and back deck. He said that he spent more than two hours showing KW the rental unit prior to her signing the tenancy agreement. He said that KW repeatedly raised concerns about the size of the rental unit prior to signing and he asserted that after spending an hour and a half with KW in the unit he suggested that perhaps the place was not large enough for her requirements. He added that he discussed the fact that KW had significant concerns about the size of the rental unit with RP prior to him signing the tenancy agreement.

KW replied that the Landlord did not try to convince her that the unit was not big enough for her. She said that she felt the Landlord was rushing her and that she wasn't comfortable signing, but that the Landlord had told her that the tenancy agreement wasn't a legally binding document yet because RP had not yet signed. KW confirmed that she signed the tenancy agreement after the initial viewing but added that at the

time she had signed the document she was experiencing severe sleep deprivation and that this impaired her ability to recognize the suite was about half of the size that was advertised.

February Loss of Revenue

The Landlord also claimed compensation in relation to the month of February as the rental unit remained empty for that month as well and the Landlord experienced a loss of revenue for the rental unit in the amount of \$1,800.00.

The Tenants replied that they had entered into a month-to-month tenancy agreement and therefore should not be held responsible for the Landlord's loss of revenue for this month.

January and February Utilities

The Landlord claimed compensation in the amount of \$137.68 in relation to expenses incurred in relation to utilities for the months of January and February. The Landlord explained that as a result of the Tenant not occupying the rental unit during this, he incurred expenses that the Tenants would have otherwise been responsible for.

The Tenants said that they did not receive any documents pertaining to utilities in their evidence package and that she should not be responsible for these charges in the absence of such evidence.

Retention/Return of Security Deposit

KW said that they she provided the Landlord with a cash payment in the amount of \$600.00 as a security deposit on December 7 and that she received a receipt for this.

The Landlord replied that this amount was not a deposit, and that he in fact gave a receipt indicating that this amount was considered prepayment of rent. At the hearing, the Landlord explained that he noticed the receipt he provided indicated rent and that he had been advised to continue to insist it was rent.

The Landlord confirmed that RP provided \$300.00 to him on December 15, 2025.

The Tenants argued that they were not given an opportunity to participate in a move-in condition inspection, they did not receive a copy of an inspection report, and that the Landlord should not be permitted to retain their security deposit in these circumstances.

Tenants' Application

On March 25, 2025, the Tenants applied for dispute resolution, seeking compensation in relation to a prepayment of rent for the rental unit, as well as the return of their security deposit.

Prepayment of Rent

One of the Tenants, RP, provided a payment of \$300.00 to the Landlord on January 1, 2025. RP said that this was done despite the fact that the Landlord had already received notice that the Tenants would not be moving into the rental unit. RP said that he went against KW's wishes in doing so, saying that he felt pressured by the Landlord to do so.

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.

I find that the Lord has established entitlement to compensation in the amount of \$1,800.00 in relation to unpaid rent for January 2025. I find that as a consequence of signing the tenancy agreement, the parties entered into a valid and binding tenancy agreement. In reaching this conclusion, I have preferred the Landlord's testimony that he provided the Tenants with a complete copy of the tenancy agreement.

I also find that the tenancy agreement is not invalidated as a result of the Landlords misrepresentation of the total square footage of the rental unit. I have accepted the Landlord's testimony that KW spent approximately two hours viewing the rental unit prior to the tenancy agreement being signed and find that KW had sufficient opportunity to satisfy herself as to the suitability of this space during this time. I have also preferred the Landlord's testimony that he had proposed that perhaps the space was not large enough for the Tenant after spending an hour and a half with her viewing the unit and discussing this issue.

While KW proposed that at the time that she signed the document she was experiencing severe sleep deprivation and that this impaired her ability to recognize the suite was about half of the size that was advertised, I do not find her testimony to be compelling. In reaching this conclusion, I note that while she said concerns about her personal safety in her residence had disrupted her sleep, I note that she continues to reside at that location. I find, on a balance of probabilities, that KW's decision not to proceed with the tenancy agreement was the result of learning that she would not receive financial assistance from the government, without which she said the move was not possible.

I also accept the Landlord's testimony that he discussed KW's concerns about the size of the rental unit with RP prior to his signing of the document.

In light of my findings that the parties entered into a valid tenancy agreement, I find that the Tenants' notification that she did not wish to proceed with the tendency was in fact a

notice to end an existing tenancy. I find that under term 14 of the tenancy agreement, the Tenant was required to provide at least one month's written notice. Accordingly, the Tenants' notice to end the tenancy provided on December 23 ended the tenancy effective January 31, 2025. As a result, the Landlord is entitled to rent in the amount of \$1,800.00 for the month of January.

The parties agree that on January 1 the Landlord received a payment in the amount of \$300.00 towards January's rent from RP.

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 \$1,500.00 (\$1,800.00 - \$300.00).

As subsequently indicated in this Decision, I have determined that the Landlord holds a security deposit on behalf of the Tenants in the amount of \$900.00. In accordance with the off-setting provisions of section 72 of the Act, in partial satisfaction of this monetary orders I order that the Landlord may retain the Tenants' security deposit, plus interest in the amount of \$4.66.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or 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

February Rent

While the Landlord claimed compensation in the amount of \$1,800.00 for loss of rental revenue for the month of February as a result of the rental unit remaining vacant after the Tenants ended the tenancy, I note that the tendency agreement indicates that it was to operate on a month to month basis.

As previously indicated, under term 14 of the tenancy agreement, a notice received the day before rent is due on a given month ended the tenancy for the following month. Accordingly, the Landlord said that the Tenants' notice to end the tenancy in December ended the tendency for the end of January. In consideration of this, I find that the Landlord is not entitled to compensation as a result of the rental unit remaining vacant under the terms of the tenancy agreement.

This aspect of the Landlord's claim is dismissed.

January Utilities

I find that the landlord has failed to establish entitlement to compensation in relation to utilities for the month of January. In reaching this conclusion, I note that the Landlord provided a copy of a utility bill in the amount of \$137.68 dated January 6, 2025, which indicates that it is for the billing period spanning November 5, 2024 through January 5, 2025. I find that the near entirety of this period predates the tenancy. It would seem therefore that only an extremely small amount of this expense would be attributable to the tenants. In the circumstances, I find that the landlord has failed to establish the amount of or value of the damage or loss claimed.

This aspect of the Landlord's claim is dismissed.

February Utilities

I find that the Landlord has failed to establish entitlement to compensation in relation to utilities for February. In reaching this conclusion, I find that the Landlord has not identified any provision under their tenancy agreement or in law by which the Tenant is obligated to pay for utilities after the end of the tenancy.

This aspect of the Landlord's claim is dismissed.

This Landlord's claim for compensation due to damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

Is the Landlord entitled to retain a security and/or pet damage deposit? Is the Tenant entitled to the return of their security and/or pet damage deposit?

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 have already determined that the tenancy ended January 31, 2025. As the Landlord applied to retain the Tenants' security deposit on February 7, 2025, I find that the Landlord made their application within 15 days of the tenancy ending.

I also find that the Tenant's did provide a security deposit in the amount of \$900.00. I reject the Landlord's argument that this amount should not be considered a deposit in light of the fact that he subsequently realized that the receipt he issued was labelled a receipt for rent rather than for a deposit. The parties clearly understood at the time the funds were received that a deposit was being provided.

Section 36 (2) of the Act states that the right of a Landlord to claim against a security deposit is extinguished if, after having conducted an inspection with the Tenant, they do not complete a condition inspection report and give the Tenant a copy of it in accordance with the regulations.

The Tenants' claim that a move in inspection report was not completed or provided to them was not disputed.

For the above reasons, the Landlord's application for 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 is dismissed, without leave to reapply.

However, I find the Tenant's request for a return of their deposit is moot in light of my earlier decision to authorize the Landlord to retain the Tenants' deposit pursuant to section 72 of the Act.

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

To be awarded compensation for a breach of the Act, the Tenant must prove:

- the Landlord 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 Tenant acted reasonably to minimize that damage or loss

I find that the Tenant has failed to establish entitlement to compensation in relation to the \$300.00 payment to the Landlord towards January's rent. I have already determined that the parties entered into a valid tenancy agreement. Furthermore, I have also already determined that the Landlord is entitled to compensation in relation to unpaid rent for the month of January. In consideration of this, I see no basis under the tenancy agreement or residential tenancy legislation by which the Tenants would be entitled to the return of these funds.

This Tenant's claim for compensation due to damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

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

As the parties were equally successful in their applications, I find that the Landlord is entitled to reimbursement in the amount of \$50.00 for his filing fee paid with respect to this application under section 72 of the Act.

Conclusion

This Landlord's claim for compensation due to damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

This Tenant's claim for compensation due to damage or loss under the Act, regulation or tenancy agreement is dismissed without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$645.34** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$1,500.00
<i>Security Deposit</i>	-\$904.66
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$50.00
Total Amount	\$645.34

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.

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 8, 2025

Residential Tenancy Branch