



Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

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

- recovery of the money for unpaid rent and/or utilities – request to retain security and/or pet damage deposit
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with a cross-application filed by the Tenant (the Tenant's Application) under the Act on March 2, 2025 seeking:

- an order that the Tenant's security and pet damage deposit be returned

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) for the Landlord's application

The Landlord testified that the Proceeding Package and evidence were served on the Tenants by registered mail on February 14, 2025. The Tenant acknowledged receipt on or about February 18, 2025. Therefore, I find the Tenant was served on February 14, 2025, by registered mail in accordance with sections 88 and 89(1) of the Act.

The Tenant confirmed that she did not submit any separate response evidence in respect of the Landlord's application, and that her evidence for both applications was included in the Tenant's Proceeding Package.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) for the Tenant's application

The Tenant testified that the Proceeding Package and evidence were served on the Landlord in person on March 5, 2025. The Landlord acknowledged receipt of the Tenant's Proceeding Package and evidence. Therefore, I find the Landlord was served in person on March 5, 2025 in accordance with sections 88 and 89(1) of the Act.

The Landlord confirmed that she did not submit any separate response evidence in respect of the Tenant's application, and that her evidence for both applications was included in the Landlord's Proceeding Package.

Issues to be Decided:

1. Is the Landlord entitled to a Monetary Order for unpaid rent?
2. Is the Landlord entitled to recover the filing fee for the Landlord's application from the Tenant?
3. Is the Tenant entitled to the return of the security and pet damage deposit?

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 parties agreed that this tenancy agreement began on August 21, 2023, with the monthly rent at \$1,300.00, due on the first day of the month, with a security deposit in the amount of \$650.00 and a pet damage deposit in the amount of \$200.00.

There is no dispute that the Landlord did not conduct a move-in inspection.

The parties agreed that the Tenant moved out of the rental unit on January 31, 2025, and the keys were returned to the Landlord. A move-out condition inspection was conducted on the same day.

Unpaid rent

The Landlord claims \$1,300.00 in unpaid rent for the month of February 2025.

The Landlord testified that the Tenant gave her a written notice to end tenancy on December 31, 2024 by posting it on the Landlord's door. The notice gave an effective date of February 5, 2025. At the hearing, the Landlord testified that she received the notice on December 31, 2024.

The Landlord said she was advised by the RTB that the Tenant must pay February 2025 rent because the effective date of the notice was February 5, 2025 and rent is due on the first day of month.

The Tenant said since the Landlord received the notice on December 31, 2024, despite the notice indicating February 5, 2025 as the effective date, the effective move out date is automatically corrected to January 31, 2025 as that is the last day of the rental period following the one month notice given by Tenant.

The Landlord said the Tenant did not inform the Landlord of the amendment until around January 6, 2025, therefore, the amendment was not permitted and the Tenant is responsible for February 2025 rent.

The Landlord said they posted the rental unit on Airbnb in March 2025 as the Landlord assumed the Tenant would be staying at the rental unit until the first week of February 2025.

Security Deposit and Pet Damage Deposit

The Tenant said the Landlord had not returned her security deposit nor pet damage deposit. The Tenant said she provided the Landlord with the forwarding address in the one month notice of December 31, 2024. The Tenant said she did not provide any written consent to the Landlord to keep the deposits. This is not disputed by the Landlord.

The Landlord said she is holding onto the Tenant's security deposit and pet damage deposit in lieu of February 2025 rent.

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.

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

Section 45 of the Act states that a tenant's notice to end a tenancy must comply with section 52, which requires a notice to be in writing, signed, dated, and give the address of the rental unit and the effective date of the notice, and that the notice must be served at least one month before the effective date of the notice and before the day rent is due. I find the notice complies with section 52.

The Landlord confirmed she received the Tenant's one-month notice on December 31, 2024. I therefore find that the earliest date the Tenant could end the tenancy was January 31, 2025. While the Tenant gave an effective date of February 5, 2025 on their notice, the Tenant notified the Landlord on January 6, 2025 that the date was incorrect and that they intend to vacate the rental unit on January 31, 2025. I find the effective date was automatically corrected to January 31, 2025 pursuant to section 53(3) of the Act.

Furthermore, section 7 of the Act states that a landlord who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

The Tenant notified the Landlord of the change on January 6, 2025, I find the Landlord could have looked for a new tenant for February 2025. By listing the rental unit on Airbnb, I find the Landlord had failed to mitigate her loss.

I find the tenancy ended on January 31, 2025 and the Tenant is not responsible for February 2025 rent.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and pet damage deposit?

Section 38(4) allows a landlord to retain from a security and pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) 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, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

Based on the parties' submissions, I find this tenancy ended on January 31, 2025. I further find that the Landlord was obligated to obtain the Tenant's written consent to keep the full security deposit or to file an application on or before February 15, 2025, 15 days after receiving the Tenant's forwarding address or the tenancy ending.

There is no dispute that the Landlord did not have the Tenant's agreement in writing to keep the security deposit or pet deposit. As the Landlord applied for dispute resolution within 15 days of the tenancy ending to retain a portion of the security deposit as required under section 38(1), I find the Landlord is not required to compensate the Tenant double the deposits under section 38(6) of the Act.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of all of her security deposit and pet damage deposit under sections 38 and 67 of the Act, in the amount of \$850.00, plus interest.

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

As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$882.05** under the following terms:

Monetary Issues	
Tenant's security deposit and pet damage deposit held in trust by Landlord	\$850.00
May 6, 2025 interest on Tenant's deposits	\$32.05
Total Amount owed to Tenant by Landlord	\$882.05

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).

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 6, 2025.

Residential Tenancy Branch