

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord applied 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 and pet damage deposits 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

The Tenant applied for:

- a Monetary Order for the return of all or a portion of her security deposit and pet damage deposits under sections 38 and 67 of the Act
- a Monetary Order for compensation for damages or loss under the Act, regulation or tenancy agreement under section 67 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)

Both parties acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I therefore found the Proceeding Packages duly served in accordance with the Act, and the hearing proceeded as scheduled.

Service of Evidence

Both parties acknowledged receipt of the documentary evidence and agreed to its inclusion.

Due to this agreement, I find the parties' evidence properly served using my authority under section 71(2) of the Act and accepted it for consideration.

Preliminary Matter

The following issue was withdrawn at the outset of the hearing with leave to reapply:

- 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

Agent for the Landlord, M.M. confirmed that the Landlord is only seeking for a Monetary Order for unpaid rent, an authorization to retain the Tenant's security and pet damage deposits, and an authorization to recover the filing fee from the Tenant. In accordance with section 64 (3)(c) of the Act, I have permitted the application to be amended and this issue is withdrawn.

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 Tenants' security and pet damage deposits in partial satisfaction of the Monetary Order requested under the Act?

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

Is the Tenant entitled to a Monetary Order for compensation for damages or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of her security and pet damage deposits under the Act?

Background and Evidence

Evidence was provided showing that this fixed term tenancy began on September 7, 2024, with a monthly rent of \$1,950.00, due on first day of the month, with a security deposit of \$975.00 and a pet damage deposit of \$975.00, currently kept by the Landlord.

Both parties agreed that the Tenant provided a written notice to end tenancy on September 27, 2024, moved out on October 1, 2024 and provided a forwarding address to the Landlord on February 4, 2025.

The Landlord submitted that only a move-in inspection was conducted on September 14, 2024 but the Tenant denied attending any move-in inspection. Both parties confirmed that there was no CIR filled out by the parties.

The Landlord submitted their application to retain the Tenant's security and pet damage deposits on February 18, 2025, and the Tenant applied for the return of her deposits on March 24, 2025.

Unpaid Rent

The Landlord is claiming \$1,950.00 for unpaid rent of October 2024 on the basis that the Tenant failed to give one month's notice.

Damage or loss under the Act, regulation or tenancy agreement

The Tenant is seeking \$7,908.39 for compensation for damage or loss under the Act, regulation or tenancy agreement related to the following items:

1. Unable to use the rental unit from September 7 to 13, 2024 (\$390.00)
2. Unit Cleaning (\$200.00)
3. The Tenant's hotel expenses on September 26, 2024 (\$330.40)
4. Dining out expenses (\$880.00)
5. The Tenant's hotel expenses on September 30, 2024 (\$174.02)
6. The Tenant's son's hotel expenses from September 30 to October 31, 2024 (\$2,027.50)
7. Gasoline expenses (\$3,361.82)
8. Storage fee (\$544.65)

The Tenant stated that on September 7, she discovered there was a missing window in one of the bedrooms and notified the Landlord. She said that she was unable to use the unit until September 14 when the window was replaced as it was unsafe to put in her personal belongings. She said that she was staying in her previous residence during September 7 to 13 as she was in the process of moving between two residences. She admitted that rent of her previous residence was paid up to September 30 as her son wanted to stay there until end of September.

The Tenant is seeking 10 hours of work, totalling \$200.00, as the Landlord did not clean the unit at the start of the tenancy and she had spent over 10 hours doing the unit cleaning.

The Tenant is seeking hotel expenses on September 26, 2024 as she and her daughter had to stay in a hotel that night due to the threats from her upstairs neighbours.

The Tenant is seeking dining out expenses because she was unable to use the stove while residing in the rental unit from September 14 to 30 due to the bare wires of a fan hanging above the stove.

The Tenant stated that she ultimately moved out on October 1, 2024 due to the threats made by her upstairs neighbours and the uninhabitable condition of the unit. As a result, she is seeking her hotel expenses on September 30, 2024, her son's hotel expenses from September 30 to October 31, 2024, gasoline and storage expenses. She said that she did not have the repairs done herself but chose to move out because she did not have sufficient funds to do the repairs.

In support, the Tenant submitted statements made by her young daughter and elderly mother and a Notice to End Tenancy dated September 27, 2024 stating the following:

I, [the Tenant], and family are here by giving you our one-month notice ending tenancy on October 31, 2024 or earlier effectively breaking our one-year lease as advised by the Residential Tenancy Branch due to the unit at [redacted] not being up to health and safety standards of living. I have included the list of things that need to be assessed and dealt with in the unit. I was only there for one day last week and then as explained in text just got back into the unit on this past Monday night. The few things I noticed prior to moving in I notified you of and gave you 6 days to fix these and they still weren't done such as the fridge (done) stove (which took you 2 days after my daughter was here to put in and you were supposed to install the fan above the stove knowing we cannot use the stove with the wires hanging above it but this still has not been done and cleaning that was never done (sewage on floor and is still not clean after washing twice coming away with 7 buckets of black sludgy water so far) and painting of walls which you are refusing to do only wanting to do spot painting even though you have not painted the unit in full in many years) let alone the things I have included now in the list which are a danger to myself and children both health and safety wise. Due to these reasons, we are moving out of the unit as soon as we have a place to go and storage.

List of Safety and Health reasons for leaving and list of repairs and damages with unit as I received it from you [...]

These are not a full list of the damage and issues (the one I was writing for you) in unit I will include that too with this but these issues are extensive so we are moving as these all would have been notice when you did a walk through with the previous tenant and as such should have been dealt with prior to us moving in and it is now a hazard (safety and health) for us to stay here and we are looking for a place to move into.

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(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

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.

Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the undisputed testimony of the parties and the evidence, I find that the Tenant provided the Landlord with a written notice to end tenancy on September 27, 2024. I find that the earliest date the Tenant could end the tenancy under section 45(1) of the Act, based on a September 27, 2024 notice to end tenancy, was October 31, 2024.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$1,950.00.

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

Under section 38 of the Act, the deadline for the Landlord to return the Tenant's deposits is within 15 days of the last day of the tenancy, or the date that the Landlord received the Tenant's forwarding address, whichever is later.

As the Landlord received the Tenant's forwarding address on February 4, 2025, the deadline for the return of the deposits is February 19, 2025. The Landlord did not return the deposits. The Landlord applied prior to February 19, 2025, to claim against the deposits for unpaid rent.

The Landlord filed a timely claim for \$1,950.00 in unpaid rent. This claim exceeds the value of the deposit and is unrelated to the condition of the rental unit. I find the value of the security deposit is \$975.00 plus \$11.86 interest.

The Landlords are not entitled to file against the deposits for damage to the condition of the rental unit. Sections 23 and 35 of the Act and sections 14 – 21 of the Regulation require the landlord to perform condition inspections and fill out reports for both occasions. The consequence of not abiding by these sections of the Act and Regulation is that the Landlord's right to hold the deposits after the 15 day deadline to claim against them for damage to residential property is extinguished.

Under 36(2) of the Act, the Landlord's right to claim against the security and pet damage deposits for pet and other damage to the condition of the rental unit is extinguished.

According to the Act's definition of a pet damage deposit and section 38(7), a pet damage deposit is only for damage caused by a pet. A pet damage deposit cannot be

held by a landlord for any liability other than pet damage. As the Landlord extinguished their right to claim against the pet damage deposit for pet damage, they were required to return the pet damage deposit to the Tenant by February 19, 2025.

Under section 38(6) of the Act, the value of the pet damage deposit is doubled from \$975.00 to \$1,950.00 because the Landlord extinguished their right to claim against the pet damage deposit and did not return the deposit by February 19, 2025. With reference to Policy Guideline 17, interest is calculated on the original deposit amount and is not doubled. The interest on the deposit is \$11.86.

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

As the Landlord was successful in part of 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 a Monetary Order for compensation for damages or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

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

All of these four conditions must be satisfied to be awarded compensation.

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Item #1 Compensation from September 7 to 13, 2024

I note that the window was replaced a week after the Landlord was notified. I also note that the Tenant was staying in her previous residence from September 7 to 13.

While I accept that the Landlord might be in breach of section 32 of the Act at the start of the tenancy, I find the Tenant did not provide any supporting documentary evidence to demonstrate that she had incurred damages or loss as a result of the missing window.

For this reason, I do not find that the Tenant has proven this claim. I decline to order compensation for this claim.

Item #2 Unit Cleaning

I have reviewed the photographs submitted by the Tenant. While I accept that the unit might not be at a “move-in” ready state as to cleanliness, I find the filthiness of the unit was not to an extent that rendered it not living up to the health, safety and housing standards required by law. As such, I find the Tenant has failed to prove that the Landlord was in breach of section 32 of the Act.

For this reason, I do not find that the Tenant has proven this claim. I decline to order compensation for this claim.

Item #3 The Tenant’s hotel expenses on September 26, 2024

While I accept that the Tenant stayed in a hotel in the evening of September 26 due to the threats made by her upstairs neighbours, I find that she failed to establish how it was due to the deliberate or negligent act or omission of the Landlord. I further find that her testimony and evidence are not sufficient to support that the Landlord has contravened the Act, and that she suffered a direct loss due to these breaches.

For this reason, I do not find that the Tenant has proven this claim. I decline to order compensation for this claim.

Items #4, #5, #6, #7 and #8

Policy Guideline #5 states that a person who suffers damage or loss because their landlord did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and commonsense steps to prevent or minimize avoidable damage or loss.

For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

I have reviewed the totality of the Tenant's evidence. I note that the Tenant moved out on October 1, 2024, approximately 2 weeks after she began occupying the unit on September 14, 2024.

While I accept that the Landlord might be in breach of section 32 of the Act for failing to provide the rental unit in a state of repair that complies with the standards required by law, and that the Tenant had suffered loss as a result of the breach, I find Tenant did not provide sufficient evidence to prove that she took reasonable steps to minimize her loss as required under Policy Guideline #5 and section 67 of the Act to be awarded compensation for her loss.

Steps that the Tenant could have taken minimize her loss include file an application for dispute resolution at the beginning of the tenancy for the repairs or have the repairs made and seek for reimbursement from the Landlord.

I find that the steps the Tenant had taken could not be considered as "practical and commonsense" steps as stated in Policy Guideline #5.

Therefore, I decline to order compensation for dining out expenses, the Tenant's hotel expenses on September 30, 2024, the Tenant's son's hotel expenses from September 30 to October 31, 2024, gasoline and storage expenses.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of her security and pet damage deposits under the Act?

As I have ordered the Landlord to retain the Tenant's security deposit in the amount of \$975.00, plus \$11.86 accrued interest and that the Landlord's right to claim against the pet damage deposit is extinguished, the Tenant is entitled to a monetary award in the amount of \$1,950.00, for the return of the double amount of pet damage deposit, plus interest accrued on the damage deposit, which is \$11.86 as of the date of this decision.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$898.72** under the following terms:

Monetary Issue	Granted Amount
Landlord's Monetary Order for unpaid rent under section 67 of the Act	\$1,950.00
Landlord's authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<i>Landlord's authorization to retain all of the Tenant's security deposit plus interest</i>	-\$986.86

<i>Return double amount of pet damage deposit, plus interest to Tenant</i>	\$1,961.86
Total Amount	\$898.72

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 Landlord 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 13, 2025

Residential Tenancy Branch