

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 damage to the rental unit or common areas under sections 32 and 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 Act for:

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

Service of Notice of Dispute Resolution (Proceeding Package) and Evidence

Landlord's Application

The Tenant's agent, KP, testified that the Landlord served the Tenant with the Proceeding Package and evidence via registered mail. KP further stated the Tenant had sufficient time to review these materials.

I find that the Tenant was served with the Proceeding Package in accordance with section 89 of the Act and with the evidence in accordance with section 88 of the Act.

JK, the Property Manager for the Landlord, testified that the Landlord received the Tenant's response evidence via registered mail and had sufficient time to review it.

I find that the Landlord was served with the Tenant's response evidence in accordance with section 88 of the Act.

Tenant's Application

JK testified that the Tenant served the Landlord with the Proceeding Package and evidence via registered mail. JK added that the Landlord had sufficient time to review these materials.

I find that the Landlord was served with the Proceeding Package in accordance with section 89 of the Act and with the evidence in accordance with section 88 of the Act.

KP stated that the Landlord did not serve any response evidence and JK confirmed this.

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 all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

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

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

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.

KP and JK agreed that this tenancy began on August 11, 2021, with a monthly rent of \$1,982.35, due on the first day of the month, with a security deposit in the amount of \$925.00. The parties also agreed that the tenancy ended on September 15, 2024 and that the security deposit has not been returned to the Tenant.

JK testified that there was no move in inspection report on file so she did not know if it was ever conducted by the Landlord. However, JK stated that a move out inspection was conducted on the Tenant's behalf but the Tenant was not present for it. JK stated that the Tenant informed the Landlord that she could not attend the move out inspection on September 16, 2024 as had been previously decided. In response, the Landlord posted a notice of entry and final opportunity for an inspection on the door of the rental unit on September 16, 2025, for the inspection to take place on September 17, 2024 instead. JK admitted that the Landlord thought that the Tenant had moved out of the

unit on September 16, 2024 as the unit was empty and she had left the keys for the unit behind. Despite this, JK stated that the Tenant was not informed via text or any other means that the inspection was rescheduled for September 17, 2024.

KP testified that the Tenant was unable to attend the inspection on September 16, 2024 and the Tenant submitted text messages with the Landlord as evidence. The text messages show that the Tenant initially agreed to a 4 pm inspection on September 16, 2024. However, she did not attend and the Landlord texted her on September 16, 2024 asking if she was on her way. The Tenant replied to the Landlord on September 17, 2024, explaining that she was unable to attend the prior day as her child had soccer. KP further stated that the Tenant was not informed of a second opportunity to attend the move out inspection on September 17, 2024.

Both parties agreed that the move out inspection completed by the Landlord was emailed to the Tenant on either January 10 or 11, 2025. They also agreed that the Tenant sent her forwarding address to the Landlord on February 10, 2025 via email, and that the Landlord did not send the Tenant her security deposit.

JK testified that the Tenant did not pay rent, parking or storage fees for September 2024. She further added that the tenancy was supposed to end on September 30, 2024, based on notice provided by the Tenant. However, JK explained that due to the Tenant's failure to pay rent for September 2024, she was issued a 10 Day Notice to end tenancy.

KP agreed that the Tenant has not paid rent for September 2024. She added that 10 Day Notice issued by the Landlord required her to move out of the unit by September 17, 2024, but she moved out on September 15, 2024. KP stated that the Tenant did not have money to pay the Landlord rent for September 2024 and also pay rent for the new unit to which she moved. KP added that the Tenant offered to make monthly payments to the Landlord for the rent owed but the Landlord did not agree.

JK stated that along with the rent, the Landlord is also looking for the Tenant to pay the parking fee of \$70.00, the storage fee of \$15.00, and the late fee of \$25.00, all for September 2024. The Tenant provided a copy of the tenancy agreement, which allows for a late fee of \$25.00. The Tenant agreed that she has not paid any of these fees for September 2024.

JK stated that the Tenant moved into a brand-new unit where no one had lived before. She added that there was therefore no damage to the unit prior to the Tenant moving in, and any damage seen in the pictures submitted by the Landlord as evidence was caused by the Tenant.

JK stated that the walls were painted in 2021 before the Tenant moved into the unit, likely around June or July, but the unit had to be repainted after the Tenant moved out. JK also stated that a piece of furniture that she saw the Tenant's boyfriend deposit into the dumpster had to be professionally removed as the waste management company

does not take large items. She added that the Landlord had video evidence in support but was unable to submit it.

JK stated that the Landlord wished to claim \$630.00 for cleaning costs, \$105.00 for having the furniture hauled, and \$220.00 in relation to the damage to the walls.

The Landlord submitted the following invoices in support:

- Invoice from Alzate Holdings Inc. DBA ZenGrove Maintenance, dated October 8, 2024, for cleaning services, in the amount of \$630.00.
- Invoice from Parry's Hauling & Junk Removal Ltd, dated September 9, 2024, for removal of items, in the amount of \$105.00.
- Invoice from Michael Maclean, dated October 7-9, 2024, for patching and paint related services, in the amount of \$1,500.00 (of which the Landlord is only claiming \$220.00 as compensation).

The Landlord also submitted various pictures as evidence, which showed that the walls in the dining area had marks and damage from hooks that had been attached, the entrance area had marks on the walls, the entrance closet was dirty, the area behind the stove and the sides of the stove were dirty, the oven was dirty, the exhaust fan in the kitchen was dirty, areas around the kitchen sink were somewhat dirty, the area behind the refrigerator was dirty and contained trash, the dryer and washer and the areas around them were dirty, the walls in the living room area had marks, the main bathroom had some marks on the walls and was a bit dirty, the master bedroom had dirt along the wainscoting and some marks on the walls, the master ensuite was a bit dirty, the patio door was dirty and had damage along the wall, the second bedroom had some marks on the walls, and the suite door was dirty.

KP stated that the unit had not been freshly painted when the Tenant moved into the unit, adding that painters and dry wall installers were still working on the unit after the Tenant moved in. KP added that the unit was still under construction when the Tenant moved in and it was never properly finished.

KP also stated that the unit was empty when the tenancy ended and there was nothing to haul. However, she added that the Tenant does not know if her boyfriend disposed of a piece of furniture in the dumpster, adding that she had taken her furniture when she moved out.

KP stated that the Landlord provided a list of things that needed to be cleaned, but did not provide any instructions for how to pull out the stove or refrigerator, which is why they were not pulled out for cleaning. However, JK took the position that instructions for cleaning, including for pulling out the stove and the refrigerator were left on the door of the rental unit on September 10, 2024.

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.

Based on the evidence before me, I find that rent of \$1,982.35 was not paid when due on September 1, 2024.

Therefore, I find that the Landlords have established a claim for unpaid rent owing for September 2024, in the amount of \$1,982.35.

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 Landlords are entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$1,982.35.

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

JK stated that the Landlord wished to claim \$630.00 for cleaning services, \$105.00 for having the furniture hauled, and \$220.00 in relation to the damage to the walls. JK added that the Landlord also wanted the parking fee of \$70.00, the storage fee of \$15.00 and the late fee of \$25.00.

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

Cleaning

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the pictures submitted by the Landlord demonstrate that some areas of the unit should have been better cleaned by the Tenant. In failing to do clean these areas, the Tenant did not comply with section 37 of the Act and the Landlord suffered a loss in having to hire professional cleaners, the invoice for which was provided.

Therefore, I find that the Tenant is responsible for the cleaning costs, in the amount of \$630.00.

Furniture Removal

JK stated that video footage exists showing that the Tenant's boyfriend disposed a large piece of furniture into the dumpster, which the Landlord then had to pay to get removed. However, JK added that the Landlord failed to submit this video evidence. In the absence of such evidence, I find that the Landlord has failed to demonstrate that the Tenant owes compensation to the Landlord in relation to the junk removal services.

Damage to the Walls

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

JK testified the unit had been freshly painted in 2021 before the Tenant moved in and took the position that the damage to the walls, as demonstrated in the pictures submitted by the Landlord, was caused by the Tenant. I find that by stating that the unit still had paint and drywall work being done when the Tenant moved in, KP confirmed that the unit had been freshly painted at the beginning of the tenancy, if not before. Therefore, I find that the damage to the walls as shown in the pictures was caused by the Tenant.

Given the damage caused to the walls in the unit by the Tenant, as demonstrated by the pictures submitted by the Landlord, I find that the Tenant did not comply with section 37 of the Act and the Landlord suffered a loss as a result as they had to have the walls patched and painted by a professional, the invoice for which was provided.

Therefore, I find that the Tenant is responsible for the costs associated with patching and painting the walls, in the amount of \$220.00.

Parking, Storage and Late Fee for September 2024

The tenancy agreement submitted by the Tenant as evidence provides for a monthly parking fee of \$70.00 and a late fee of \$25.00. Both parties agreed that a storage fee of \$15.00 was also payable each month.

JK and KP agreed that the Tenant did not pay the parking, storage and late fee for September 2024. In doing so, the Tenant contravened the terms of the tenancy agreement and caused a loss to the Landlord. I find that the Tenant therefore owes compensation to the Landlord with regards to this issue, in the amount of \$110.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator

may determine the amount of damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlords are entitled to 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, in the amount of \$960.00.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit? Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Section 38(4) allows a landlord to retain from a security 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 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 the security deposit or make an application for dispute resolution claiming against the security deposit.

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

I find that there is no evidence provided to show that the Landlord had the Tenant's agreement in writing to keep the security deposit.

Moreover, it is undisputed that the Landlord received the Tenant's forwarding address on February 10, 2025. Based on the Residential Tenancy Branch's records, the Landlord applied for dispute resolution on February 20, 2025, within 15 days of receiving the Tenant's forwarding address.

As the Landlord has complied with section 38(1) of the Act, the Landlord does not owe the Tenant double the security deposit under section 38(6) of the Act.

In addition, I note that since the Landlord did not engage in a move in inspection, the right of the Landlords to claim against the Tenant's security deposit is extinguished in accordance with section 24 of the Act.

However, as I have found that the Landlord is entitled to a month's worth of rent and compensation for damage or loss, I allow the Landlords to retain the Tenant's security deposit of \$925.00 under section 72 of the Act, in partial satisfaction of the monetary award.

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

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$2,117.35** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$1,982.35
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	\$960.00
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	-\$925.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$2,117.35

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 Page 6 of 6 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 29, 2025

Residential Tenancy Branch