

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 Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (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
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants were served on March 13, 2025, by leaving it with an adult person who apparently resides with the people to be served in accordance with section 89(1) of the Act. A photograph and Proof of Service form was provided.

The Landlord was served by registered mail on April 2, 2025, in accordance with section 89(1) of the Act. A Proof of Service form and Canada Post tracking number was provided.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

The Landlord's agent B.J. (the Landlord's Agent) originally advised they did not receive the evidence; however, the Landlord's witness M.M. (the Landlord's Witness) confirmed

the evidence was received at the address for service provided by the Landlord. The Landlord's Agent reviewed the evidence prior to the hearing commencing and took no issue with the evidence being considered. As such, I find that the Tenants' evidence was sufficiently served on the Landlord, under section 71(2)(b)(c) of the Act.

Preliminary Matters

- Amend Names

The applications were amended to state the Landlord's legal business name. The Landlord's application was amended to state the Tenants' legal names.

- Partial Settlement

The parties agreed:

1. The Tenants will pay the Landlord \$107.71 for Fortis BC.

As the Tenants have agreed to this claim, I will not address this item in my decision below. I authorize this amount to be deducted from the security deposit, pursuant to section 72 of the Act. The parties confirmed they voluntarily agreed to this settlement and that it is final. My decision will deal with the remaining claims.

Issues to be Decided

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

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

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

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

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

Are the Tenants 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.

Evidence was provided showing that this tenancy began on April 1, 2021, with a monthly rent of \$2,600.00, due on the first day of the month, with a security deposit in the amount of \$1,175.00, paid April 1, 2021. The tenancy ended February 28, 2025. The Landlord took over this tenancy around April 2024.

The Landlord applied to recover utilities and cleaning and requested to retain the security deposit. The Tenants filed a cross application seeking the return of the security deposit.

Security Deposit

The Tenants' advised the original Landlord did a move-in condition inspection report but were never provided a copy. The parties confirmed when the Landlord took over the tenancy no new move-in condition inspection report was completed. The parties confirmed no move-out condition inspection report was completed but a walk-through was done. The Tenants advised they provided the Landlord with the forwarding address via email, to the email listed on the tenancy agreement, on March 10, 2025. A copy of the email was provided. The Tenants argued they also served the forwarding address on the RTB Form #47 by email and registered mail, on April 2, 2025. The Landlord's Agent could not recall if they received these emails but checked during the email and confirmed both emails were received.

Utilities

The Landlord's application included a claim for BC Hydro and the amount was listed as "TBD". During the hearing the Landlord's Witness advised on March 24, 2025, the Landlord received a copy of the BC Hydro bill. I will note the Landlord's application was never amended to seek the new amount and no copies of the bill were ever provided to the Tenants or RTB. The Landlord's Witness argued the bill covers the period of January 8, 2025, to March 7, 2025, and is \$190.18. The Landlord's Witness argued the amount would need to be split in half and deduct 7 days for the days on the bill after the Tenants vacated. The Landlord's witness argued term 3 of the tenancy agreement outlines the utility arrangement, which is that utilities are split 50/50 between the Tenants and the basement tenants.

The Tenants' position is that they never received a copy of the bill and cannot confirm these amounts.

Cleaning

The Landlord's position is that garbage was left in the garage by the Tenants. The Landlord is seeking \$700.00 and argued this is based on a quote the Landlord received. No copy of the quote was provided, and no photographs were provided. The Landlord advised the garbage has not been removed as of the date of this hearing. The Landlord's Witness argued they saw the garbage in the garage.

The Tenants' position is that no garbage was left behind by the Tenants. The Tenants provided a witness statement. The Tenants also argued that no proof was provided of any garbage.

Analysis

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

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 Landlord received this bill around March 24, 2025, and the Landlord had 2 months to amend their application to seek the amount and provided the Tenants and the RTB with a copy of the bill. The Landlord did not do either of these things. Without a copy of the BC Hydro bill, I cannot confirm what amount is owed and for what period it is owed for. As such, I decline to award any amount for the BC Hydro bill.

Therefore, I find the Landlord claim for a Monetary Order for unpaid BC Hydro under section 67 of the Act, is dismissed without leave to reapply.

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

The Landlord did not provide a move-out condition inspection report or any photographs or videos to establish that garbage was left behind. As such, the Landlord has failed to establish that the Tenants did not comply with the Act, regulation and or tenancy agreement or that any loss resulted. Additionally, the Landlord did not provide an invoice to support the value of the loss. Based on the above, I decline to award the Landlord any compensation for the garbage removal.

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

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

Section 38(4) allows a landlord to retain from a security and/or 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.

Based on the evidence and testimony of both parties, I find that the tenancy ended February 28, 2025, and the Tenants provided their forwarding address via email, to the email provided on the tenancy agreement by the Landlord, on March 10, 2025. The Landlord made their application to retain the security deposit on March 10, 2025. As such, I find that the Landlord did make their application within 15 days of the forwarding address being provided.

The Landlord did not complete a move-out condition inspection report; however, it is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the Act because extinguishment only related to claims for damage and the Landlord has claimed for cleaning and unpaid utilities. Given that the Landlord made their application within the 15 day deadline and extinguishment does not relate to claims for unpaid utilities and cleaning, the security deposit is not doubled.

The Landlord owes the Tenant \$1,234.88, including interest; however, the Tenants agreed to pay the Landlord \$107.71. The amount owed to the Tenants will be set off against the amount the Tenant owes to the Landlord, pursuant to section 72(2) of the Act. As such, I grant a Monetary Order for the Tenants in the amount of \$1,127.17, under section 67 and 72 of the Act.

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

As both parties were partially successful, I find the filing fee amounts awarded would be offset against each other. As such, I decline to award any amount for the filing fee for either party.

Conclusion

grant the Tenants a Monetary Order in the amount of **\$1,127.17** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenants for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$1,234.88
a Monetary Order for the Landlord for unpaid rent/utilities, under section 64.2 of the Act	-\$107.71
Total Amount	\$1,127.17

The Tenants are 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 22, 2025

Residential Tenancy Branch