

DECISION

Introduction

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord requested:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- 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 Tenants under section 72 of the Act

The Tenants requested:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- 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
- an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Both parties confirmed receipt of each other's applications and evidence. In accordance with sections 88 and 89 of the *Act*, I find both parties duly served with each other's Applications and evidence.

Issue(s) to be Decided

Are the parties entitled to the monetary orders requested?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me, and my findings around it are set out below.

This tenancy began on July 1, 2024, and ended on February 28, 2025. Monthly rent was set at \$3,300.00, payable on the first day of the month. The landlord holds a security deposit of \$1,650.00 for this tenancy.

The landlord filed an application on March 14, 2025 requesting the following monetary orders:

#1	Late notice of moving out - lost March rent	March 2025	\$ 3300.00
#2	Loyalty Appliance Repair	washer repair	\$ 262.50
#3	Estimate	Fridge door	\$ 300.00
#4	BC Hydro	35%	\$ 68.60
#5	Fortis BC - not received - average estimate	35%	\$ 80.00

The landlord testified that the tenants failed to give proper written notice before moving out. The landlord provided a copy of a letter dated February 1, 2025 that the tenants would be moving out on February 28, 2025.

The landlord testified that they advertised the rental unit and attempted to fill the vacancy, but was unable to do so until May 1, 2025. The landlord requested a monetary order for lost rent for the month of March 2025.

The landlord testified that the tenants also failed to pay the utilities owed for this tenancy in the amounts of \$68.60 for the hydro and \$56.72 for the gas bill.

The landlord is also seeking a monetary order for damage caused by the tenants. The landlord confirmed that no move-in or move-out inspections were completed for this tenancy, but argued that the washer and refrigerator were very new, and purchased in 2023. The landlord confirmed that prior to this tenancy, the rental unit was rented out for four or five months to three occupants. The landlord submitted an invoice for the washing machine repair, which states that they had found a clogged filter (compass card, sock, and some coins).

The tenants do not dispute the landlord's claims for utilities, but dispute the remaining claims. The tenants argued that they had informed the landlord by way of telephone on January 25, 2025 that they were moving out on February 28, 2025 due to an emergency, and the landlord responded that this would not be a problem. The tenants testified that they spoke to the landlord again on January 30, 2025, and the landlord informed the tenants that they would not be available to meet in person until February 1, 2025. The tenants feel that they gave sufficient notice before moving out, and gave the landlord access to show the unit to prospective tenants.

The tenants dispute causing any damage to the rental unit during this tenancy, and filed a cross application on May 5, 2025 requesting the return of their security deposit, plus compensation of \$432.00 and \$480.00 for time off of work to deal with this dispute, plus an additional \$1,950.00 in compensation.

Analysis

Section 67 of the *Act* establishes 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their application.

As the tenants do not dispute the claim for unpaid utilities, I grant the landlord's monetary claim the amount of \$68.60 for the hydro, and \$56.72 for the gas bill.

Is the Landlord entitled to a Monetary Order for losses associated with the termination of this tenancy?

Section 45 of the *Act* reads in part as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement...

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* provides the following requirements for form and content of a Notice to End Tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. Although the tenants may have verbally informed the landlord of their

intention to move out, and although there may have been a discussion about ending this tenancy, the evidence shows that the tenants did not provide a notice that complies with section 52 of the Act until at least February 1, 2025.

I am not satisfied that the evidence supports that both parties had mutually agreed to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. Pursuant to section 45(1) of the Act, the earliest effective date for a notice given on February 1, 2025 would be March 31, 2025.

I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the Act. The landlord is entitled to request a monetary order for loss rental income due to the tenants' contravention of the Act.

I am satisfied that the landlord demonstrated that they had mitigated the tenants' exposure to further losses as is required by section 7(2) of the Act. As noted by the tenants, the landlord actively showed the rental unit to prospective tenants. I accept the landlord's sworn testimony that they were able to fill the vacancy for May 1, 2025, and is therefore entitled to a monetary order for lost rental income in the amount of \$3,300.00 for March 2025.

Are the tenants entitled to the return of their security deposit?

Sections 23 and 35 of the Act require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the Act is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the Act.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

In review of the evidence and testimony before me, I find that the landlord failed to complete condition inspection reports for this tenancy. Accordingly, the landlord's right to claim against the security deposit is extinguished.

As per RTB Policy Guideline #17, "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit...if the landlord has

claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the RTA". Accordingly, I find that the tenants are entitled to double their deposit, plus applicable interest on the original deposit, for a total of **\$3,328.80**

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's claims for damage.

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

Section 37(2)(a) of the *Act* stipulates 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.

The tenants dispute damaging the refrigerator and washing machine during this tenancy.

Although I accept that the appliances are fairly new, the landlord confirmed that the rental unit was previously rented out and occupied by other tenants prior to this tenancy. The landlord did not provide any inspection reports for the previous tenancy, nor this one, which documented the condition of the appliances. In light of the disputed testimony and evidence, and in the absence of a move in and move out inspection reports, I have no way of ascertaining what actual damage was caused by the tenants during this tenancy.

In light of the conflicting testimony provided, and taking in consideration that the party claiming the loss bears the burden of proof, I am not satisfied that the landlord had sufficiently supported the damage to the appliances were caused by the tenants during this tenancy. Accordingly, I dismiss the landlord's monetary claims related to the damaged appliances, without leave to reapply.

Are the tenants entitled to the monetary claims requested?

The tenants requested compensation for the time and effort to prepare for, and attend, the scheduled hearing.

As per RTB Rules 7.3, “If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.” Furthermore, RTB Rule 7.4 states that “evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered”.

I find that the onus was on the tenants to prepare for, and attend the scheduled hearing, and that the losses claimed are not recoverable under the Act. Furthermore, I find that the landlord’s application did have merit, and is therefore not frivolous nor malicious. I do not find that the tenants’ claims for losses are due to the landlord’s contravention of the Act, and accordingly, I dismiss the tenants’ monetary claims for compensation without leave to reapply.

As both applications had some merit, I allow both parties to recover the filing fees paid for their applications. As both parties obtained the following offsetting monetary awards for the filing fee, no order will be made in regards to the recovery of their filing fees.

In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord’s monetary awards be offset by the security deposit and compensation due to the tenants.

Conclusion

I issue a Monetary Order in the amount of **\$96.52** in the landlord’s favour, as set out in the table below:

Item	Amount
Monetary Order for lost rental income	\$3,300.00
Monetary Order for outstanding utilities	\$125.32
Less security deposit plus applicable interest and compensation to tenants	-\$3,328.80
Total Monetary Order to Landlord	\$ 96.52

The Landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant 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.

I dismiss the remaining claims without leave to reapply.

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 30, 2025

Residential Tenancy Branch