

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
- 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

and the Tenant's 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 and/or pet damage deposit under sections 38 and 67 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find the Landlord's Proceeding Package was served to the Tenant in accordance with the Act. The Landlord provided a Canada Post tracking number and a Proof of Service RTB -55 showing it was sent to the Tenant's forwarding address on March 17, 2025, but was returned unclaimed. I deem the Proceeding Package was served on March 22, 2025.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act. The Tenant confirms not sending any evidence to the Landlord. As such, her evidence is excluded.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act. The Landlord provided two Canada Post tracking numbers and a Proof of Service RTB -55 in support of service.

Issues to be Decided

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

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 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 Tennant?

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

Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord provided a copy of a monetary order as follows:

Bailiff Charges	Bailiff Fees	\$ 4000
Paint and Wall Repairs	Damages	\$ 450
Key Replacements	Not Returned	\$ 300
Professional Cleaning	Cleaning	\$ 580
Pest Inspection	Pets	\$ 200
Garbage Removal / Junk Removal	Items Moved to Storage	\$ 1000
March 2025 Rent	Late Notice / Bailiffed	\$ 2825
Total monetary order claim		\$ 9655

The Landlord provided a copy of the tenancy agreement showing that monthly rent was \$2825.00, due on the first day of each month, and that both a \$1412.50 security deposit and a \$1412.50 pet damage deposit was paid by the Tenant. Both parties agree the Landlord still retains the entirety of the deposits.

The Landlord affirms posting an Order of Possession on the Tenant's door on February 4, 2025. The Tenant affirms receiving it in the first half of February but cannot remember the exact date. Per section 90 of the Act, I deem the Order of Possession was served to the Tenant on February 7, 2025.

The Landlord provided a copy of the Order of Possession; it is effective 7 days after service.

Both parties agree the Tenant, and her belongings were removed by bailiffs on March 3, 2025.

The Landlord provided a copy of the move in and move out CIR's. The move in CIR lists everything applicable as "Meets Property Requirements" and has supporting photographs. It is signed by both parties.

The move out CIR has photographs and descriptions that support their claims, but it is signed by the Landlord only, not the Tenant. Both parties agree the Tenant waited in the lobby while the Landlord did the move out Condition Inspection Report (CIR), because the bailiffs would not allow her back into the rental unit. The Landlord confirms not offering the TT any other time to do the CIR.

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

Policy Guideline 3 states a tenant is not liable to pay rent after a tenancy agreement has ended.

As the Tenant was given an Order of Possession that was effective February 14, 2025, I find that the tenancy ended prior to March 2025, and therefore the Tenant was overholding and is not liable for March 2025 rent.

For the reasons above, I find the Landlord is not entitled to a Monetary Order for unpaid rent.

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

The only part of the of the Landlord's Monetary Order that is actual damage to the rental unit or common areas is the claim regarding painting and wall repairs.

The move out CIR indicates that the den, master bedroom and master bathroom require painting. The accompanying pictures show several holes in the walls and spots where paint has been pulled off.

The Landlord provided a copy of a \$485.06 receipt, dated March 5, 2025, for painting and wall repair.

The Tenant affirms not being able to speak to the damage as she was not present for the move out CIR but confirms having artwork hung in the rooms in question.

I find the pictured damage to be consistent with that caused by hanging artwork and it's rushed removal, as in the situation where a bailiff removes said artwork. Although some of the damage may have been caused by the bailiffs removing the artwork quickly, in a uncareful manner, I find that ultimately the Tenant is responsible for the damage; she is the one who hung the artwork, and by her refusal to vacate the rental unit before the bailiffs attended, she is the one who set into motion the damage the bailiffs may have inadvertently caused when removing the Tenant's artwork.

I find the Landlord is entitled to \$485.06 Monetary Order for damage to the rental unit or common areas under section 32 and 67 of the Act.

I make no findings regarding the remainder of the Landlord's claim beyond that they are not damages to the rental unit or common areas.

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 35 of the Act reads as follows:

- (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

The Landlord, by not offering the Tenant an opportunity where she, or her agent, could complete the move out Condition Inspection with the Landlord, contravened section 35(1) and (2) of the Act and therefore, per section 36(2)(a) of the Act, is not entitled to retain any portion of the Tenant's deposits for damage to the residential property.

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

From my finding that the Landlord is not entitled to retain any portion of the Tenant's deposits flows my finding that the Tenant is entitled to a monetary order for the return of her deposits in the amount of \$2825.00.

Policy Guideline 17 states that where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the

parties are the same in both applications, the arbitrator will set off the awards and make a single order for the balance owing to one of the parties.

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

As the Landlord was partially successful in 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.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2239.94** under the following terms:

Monetary Issue	Granted Amount
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	\$2825.00
a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act	-\$485.06
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	-\$100.00
Total Amount	\$2239.94

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) 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.

Excluding the damage to the walls, I make no findings regarding the Landlord's claims beyond that they are not damage. The Landlord remains free to pursue compensation from the Tenant regarding these losses.

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 27, 2025

Residential Tenancy Branch