

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 dealt with the Tenant's cross Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- 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

Landlord R.R. attended the hearing for the Landlord.

Tenant J.M., Tenant's Legal Counsel S.S. attended the hearing for the Tenant.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence

The Tenant acknowledged that they received the Landlord's Notice of Dispute Resolution Proceeding and evidence on March 7, 2025, and that they have received the Landlord's evidence by delivered by courier. The Tenant raised the issue that email service is not an agreed method of service.

The Landlord submitted that the parties signed an address for service form consenting to service of documents associated with the tenancy by email.

Given the Tenant's acknowledgement that they received the Landlord's Notice of Dispute Resolution Proceeding and evidence, pursuant to section 71(2) of the Act, I find that the Tenant has been sufficiently served with the Landlord's Notice and evidence.

The Tenant did not submit any evidence on the Landlord's application.

Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence

The Landlord acknowledged that they received and reviewed the Tenant's Notice of Dispute Resolution Proceeding and evidence. Based on this, I find that the Tenant's Notice and Evidence has been served in compliance with section 88 and 89 of the Act.

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 rental property?

Is the Landlord entitled to a monetary order for compensation or financial loss?

Is the Landlord entitled to retain all or a portion of the security deposit, and pet damage deposit? Is the Tenant entitled to the return of all or a portion of their security deposit, and their pet damage deposit?

Is the Landlord entitled to recover the filing fee?

Is the Tenant entitled to a monetary order for compensation or financial loss?

Is the Tenant entitled to an order requiring the Landlord to return the Tenant's personal property?

Is the Tenant entitled to recover the filing fee?

Background and Evidence

I have reviewed the evidence presented, but I will only refer to what I find relevant for the Decision.

The written tenancy agreement was provided showing that this fixed term tenancy started on June 1, 2024, the fixed term was scheduled to end on May 31, 2025. The parties agreed that the monthly rent was \$3,400.00, due on the first day of the month, that the Landlord still holds the Tenant's \$1,550.00 security deposit, that the rental unit is the main and upper floor of a detached house, and that the Tenant rented the entire main and upper floor under the agreement. The parties also agreed that the tenancy ended on February 6, 2025, and that the Landlord received the Tenant's forwarding address on February 6, 2025.

Unpaid Rent

The Landlord's application requests the value of \$8,500 for unpaid rent or unpaid utilities.

The Landlord testified that the Tenant did not pay rent at all for the months of December 2024, January and February of 2025. The Landlord elaborated that they are only seeking the equivalent of half a month worth of rent for the Tenant's usage of the rental unit for February 2025.

The Tenant raised the issue that the Landlord has already received a monetary award on a previous application for December 2025's unpaid rent. The Tenant provided the file number from the previous application. The file number is inserted on the cover page of this Decision. In addition, the Tenant testified that they only stayed at the rental unit for a few days in February 2025, and that they do not dispute the Landlord's claim regarding unpaid rent for January 2025.

Landlord's Compensation Request for Repairs

The Landlord's application requests compensation in the amount of \$19,491.30, where the Landlord has listed the items they are requesting compensation for:


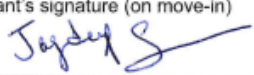
Lights - Ceiling Fans - Security Camera - Dryer - Windows - (Three glass panes)
Flooring & Carpets - Glass, Flooring - Carpet - (intentionally damaged) Kitchen
Floor Drywall - Paint Damage - Curtain Rods & Hooks - Shower - Toilet Seat 2 -
(Broken and chocked by paper, plastic cups.) Bathroom Floor - Water damage,
cracks, stains and lot more.

The Landlord testified that the rental unit was in poor condition at the end of the tenancy and elaborated that the glass, windows, curtains were damaged. The Landlord submits pictures of the rental unit taken on December 21, 2024. The Landlord explained that the damage prompted the Landlord to request for an estimate from a contractor to perform the repairs, which they received on February 17, 2025. A copy of this estimate is submitted into the evidence.

The Tenant testified that the rental unit was in a poor condition at the beginning of the tenancy. The Tenant raised the issue that the Landlord's picture evidence was taken at inconsistent times. The Tenant stated that the rental building is 53 years old and the

Landlord has not submitted any evidence to demonstrate that they have properly maintained the rental building.

Most importantly, the Tenant raised the issue that the Landlord's evidence contained a condition inspection report, where the Tenant alleged that the Landlord has imitated the Tenant's signature and altered the contents of the condition inspection report, specifically the section where a tenant may authorize a landlord to retain any amount from a deposit. The Tenant declared that they have not authorized the Landlord to retain the security deposit, and that it would be even more unusual for the Tenant authorize this deduction at the beginning of the tenancy, as the Landlord's condition inspection report suggests. I will paste the relevant section from condition inspection report below:

Security Deposit: 1550		Pet Damage Deposit: xxxx		
Date: DD/MM/YYYY 01-Jun-2024		Signature of Tenant: 		
3. Landlord's signature (on move-in) 		Landlord's signature (on move-out)		
4. Tenant's signature (on move-in) 		Tenant's signature (on move-out)		
5. Tenant's forwarding address:				
site/unit #	street # and name	city	province	postal code

Landlord's Compensation Request for Damage or Financial Loss

The Landlord's application requests compensation in the amount of \$6,026.86, where the Landlord has described on their application:

I have spent the following expenses on monetary loss. Details: Eviction services: \$1,495 Court bailiffs: \$4,293.86 RTB filing fee: \$100 courier charges \$138

The Landlord testified to the same effect as what is listed above in their application. The Landlord submitted corresponding receipts for the eviction services hired, and the bailiff fees.

The Security Deposit

The Landlord requested authorization to retain the security deposit due to the Tenant's breaches of the Act and tenancy agreement.

The Tenant opposed the Landlord's request and declared that the Landlord has breached section 38(6) of the Act, and that the Landlord is liable to pay double the amount of the deposit.

Tenant's Compensation for Damage or Financial Loss

The Tenant's application requests compensation in the amount of \$4,695.00 where the Tenant has declared on their application:

Non functioning of the dryer in laundry. For 4.5 months, we had to go to the coin laundry for getting laundry done at the rate of approximately \$20/week for each week which translates to \$80/month and \$360 for 4.5 months. One of the clogged washrooms remained unusable for about 8.5 months. Other was a leaky washroom. This issue was inadequately addressed by the landlord and remained unresolved. I want a rebate in rent for 15% of the monthly rent for 8.5 months, which translates to \$4,335. [sic]

The Tenant testified that the dryer at the rental did not function between the middle of September to December in 2024. That the dysfunctional dryer prevented the Tenant from doing laundry, which required the Tenant to use coin-operated laundry service. The Tenant elaborated that when the dryer exhibited issues, they contacted the Landlord and the Landlord responded by hiring a mechanic and order replacement parts.

The Tenant also testified that the washrooms at the rental unit suffered from leaks and that both washrooms stopped working shortly after the tenancy began.

The Landlord testified that they were contacted by the Tenant to inspect the damaged dryer, and that the Landlord believes the Tenant damaged the dryer and thus they are not responsible for the Tenant's damage or loss. Moreover, the Landlord stated that when the dryer stopped working, the Landlord brokered an agreement with the occupants of the lower floor, and that this agreement allowed the Tenant to use the downstairs dryer. The Landlord elaborated that the Tenant didn't have to use coin-operated laundry because of this agreement, and that the Tenant likely suffered no financial loss. The Landlord submitted a statement from the downstairs resident where the contents indicate that the Tenant accessed the downstairs washer until February of 2025.

Return of the Tenant's Property

The Tenant testified that the short notice provided by the bailiffs when the tenancy ended caused the Tenant to be unable to collect all their possessions. The Tenant requested for the Landlord to return:

- A seven-kilogram bag
- A jacket
- A watch
- Two shades
- Shoes
- Some clothes
- An air fryer
- A toaster
- A blender

- Utensils

The Landlord testified that the bailiffs gave a chance for the Tenant to grab their possessions, and that the bailiffs hired a moving team and that the Tenants possession were all put inside the moving truck. The Landlord declared that there were no possessions left behind by the Tenant.

Analysis

Is the Landlord entitled to a monetary order for unpaid rent, or for the Tenant's overholding?

Section 26 of the Act states that a tenant must pay rent on the due date under the tenancy agreement.

Section 67 of the Act provides the director the authority that in the event of damage or financial loss from a breach of the Act, regulation or a tenancy agreement, the director may order a party to pay compensation to the other party.

In this case, there is no dispute that the rent is due on the first day of the month under the written tenancy agreement, and there is no dispute that the monthly rent is the sum of \$3,400.00.

I turn my attention to the previous application the parties were involved in and the decision dated January 6, 2025, where the adjudicator found that the tenancy ended on December 29, 2024, when the Tenant was conclusively presumed to have accepted the end of the tenancy based on the Landlord's 10 day notice to end tenancy for unpaid rent. I will note in the same decision, the adjudicator granted the Landlord a monetary order for December 2024's unpaid rent. Consequently, I do not grant the Landlord's request for an additional monetary order for December 2024's unpaid rent.

However, based on the testimony of the parties, and the evidence provided, I find that it is clear the Tenant has stayed at the rental unit until they were removed by the Landlord's bailiffs on February 6, 2025. Residential Tenancy Policy Guideline #3 provides guidance on what may be considered overholding, it states:

Section 44 of the RTA sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA. This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

In these circumstances, I find that the Tenant's usage and stay at the rental unit between December 30, 2024, to February 6, 2025, must be considered as overholding.

Subsequently, I find that the Landlord is entitled to a monetary award under section 67 of the Act for the Tenant's overholding of the rental unit for the entire month of January 2025, and for the period between February 1 to February 6, 2025, at a rate equivalent to the monthly rent under the tenancy agreement for January 2025 – the sum of \$3,400, and at a rate equivalent to the monthly rent divided by the number of days in February for February – the sum of \$728.57. The January and February's awards added together equals \$4,128.57.

Is the Landlord entitled to a monetary order for damage to the rental unit or rental property?

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation
3. The value of the damage or loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Landlord has not submitted sufficient evidence to demonstrate that the Tenant breached the Act, regulations, or the tenancy agreement in a manner that caused the Landlord to incur damages or financial loss.

For example, in the Landlord's own testimony, they mentioned that the glass, windows, and curtains were damaged, and the Landlord's application references even more items that suffered damage, however I find that the Landlord has not submitted any meaningful evidence to establish the causation of the damage, whether the Tenant caused the damage during the tenancy or whether the damage was already there at the beginning of the tenancy as the Tenant contends.

I find that the Landlord has failed to satisfy the first and second conditions of the four-point test and the test fails.

The Landlord's application for a monetary order for damage to the rental unit or financial loss sustained to repair damage at the rental unit is dismissed, without leave to reapply.

Is the Landlord entitled to a monetary order for compensation or financial loss?

The above four-point test is to be applied here.

Having reviewed the testimony, the evidence, I find it more likely than not that the Landlord has demonstrated that they are entitled to a monetary order for the bailiff fees. The parties do not dispute that bailiffs were involved in the removal of the Tenant at the end of the tenancy.

In my view, it is clear that the tenancy ended due to the Tenant's breach of the Act and tenancy agreement, specifically the non-payment of rent. This is clearly supported by the outcome decision from dated January 6, 2025 associated with the Landlord's previous application, and the corresponding order of possession once the 10 day notice was found to be valid in that decision.

It is also clear to me that the Tenant stayed past the effective date of the Landlord's notice to end tenancy.

In these circumstances, I find that the Landlord acted reasonably by hiring bailiffs to enforce their right gain possession of the rental unit based on the order of possession.

I accept the Landlord's evidence, specifically the bailiff fees report and invoice.

Based on the above, I find that the Landlord has satisfied the four-point test and I further find under section 67 of the Act that the Landlord is entitled to a monetary award in the amount of \$4,293.86 for financial loss, specifically for the bailiff fees.

Regarding the Landlord's request for compensation for eviction services, I find that the Landlord is not entitled to a monetary award due to the fact that they have not submitted any evidence or provided any reasonable explanation for why eviction services were required. Consequently, the Landlord does not satisfy the fourth condition of the four-point test and the test fails.

Regarding the Landlord's request for compensation for courier fees, I find that the Landlord is not entitled to a monetary award given that the Landlord has not submitted any evidence to demonstrate the value of the courier fees to support their financial loss. The Landlord's application includes a claimed amount but there is an absence of any evidence to demonstrate that the Landlord incurred such a loss. Based on this, I find that the Landlord does not satisfy the third condition of the four-point test and the test fails.

Under section 67 of the Act, the Landlord is granted a monetary award for their financial loss due to bailiff fees, in the amount of \$4,293.86.

Is the Landlord entitled to retain all or a portion of the security deposit, and pet damage deposit? Is the Tenant entitled to the return of all or a portion of their security deposit, and their pet damage deposit?

Section 38(1) provides that within 15 days after the later of when the tenancy ends, and when a landlord receives a tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit with interest or make an application for dispute resolution claiming against the security deposit or pet damaged deposit.

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or pet damage deposit if at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation or the tenant...

In this case, the Landlord confirmed that they still hold onto the Tenant's \$1,550.00 security deposit at the time of the hearing, the Landlord confirmed that they received the Tenant's forwarding address on February 6, 2025, and the application indicates the Landlord filed their application for dispute resolution on March 3, 2025.

Regarding whether the parties had an agreement that satisfies section 38(4) of the Act, I find that even if I accepted the questionable contents of the condition inspection report, specifically the Tenant's alleged signature authorizing the Landlord to retain the entire security deposit, this agreement would not satisfy section 38(4) of the Act given that the agreement not created at the end of the tenancy.

Based on the above, I find that the Landlord did not comply with section 38(1) by filing their application within the required time – February 6 to March 3, 2025 exceeds the fifteen day limit, nor did the parties form a valid agreement that is consistent with section 38(4) of the Act that authorizes the Landlord to retain any amount from the security deposit.

Section 38(6) of the Act states that if the landlord does not comply with section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that section 38(6) of the Act is applicable here given the Landlord's contravention of sections 38(1) and 38(6)(a) of the Act.

In these circumstances, I find that the Landlord is not entitled to retain all or a portion of the security deposit, and I further find that the Tenant is entitled to a monetary award for the return of the entire \$1,550.00 security deposit, plus accumulated interest of \$30.81, plus the doubled portion of the entire sum of the original security deposit, \$1,550.00. The three amounts added together equal \$3,130.81.

The Landlord's application to retain the security deposit is dismissed, without leave to reapply. The Tenant's application for the return of the security deposit is granted.

Under sections 38(6) and section 67 of the Act, I grant the Tenant a monetary award in the amount of \$3,130.81.

The interest was calculated in accordance with the Residential Tenancy Regulation, based on the date of the beginning of the tenancy, the date of this Decision, and with the assistance of the publicly accessible Residential Tenancy Branch deposit interest calculator.

Is the Landlord entitled to recover the filing fee?

As the Landlord was not entirely successful in their application, I find that the Landlord is not entitled to recover the filing fee. The Landlord's application is dismissed, without leave to reapply.

Is the Tenant entitled to a monetary order for compensation or financial loss?

The four point test is to be applied here.

Regarding the loss of the dryer facility and the washroom facilities during the tenancy, based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Tenant has provided insufficient evidence to demonstrate that they incurred a financial loss following the Landlord's breach of the Act, and I find that the Tenant has provided insufficient evidence to demonstrate the value of the loss.

For example, the Tenant alleges that they had to use coin laundry however there is an absence of any receipts to support their claim for financial loss.

In another instance, if the washrooms at the rental unit stopped working, the Tenant has not submitted any evidence to show sort of costs they incurred due to the non-function of the washroom facilities. Subsequently, I find that the Tenant has not satisfied the second and third condition of the four point test and the test fails.

The Tenant's application for compensation is dismissed, without leave to reapply.

Is the Tenant entitled to an order requiring the Landlord to return the Tenant's personal property?

In this case, as the parties agreed that the tenancy ended when the Landlord hired bailiffs to remove the Tenant, and that a moving team accompanied the bailiffs hired, I find it more likely than not that the Tenants possessions at the rental unit were sufficiently removed and that the Tenant had a reasonable opportunity to collect their possessions before leaving with the bailiffs.

I also assign weight to the Landlord's testimony that there were no items left behind by the Tenant after the tenancy ended.

However, even if I accept the Tenant's claim that certain items were left behind, section 30.8 of the Residential Tenancy Regulation (the Regulation) states that a landlord may dispose of abandoned personal property if the landlord reasonably believes that the abandoned personal property has a total market value of less than \$1,000.00...

As the Tenant has not provided any meaningful evidence to support that the total cost of the Tenant's items is equal to or greater than \$1,000.00, I find that the Tenant is not entitled to an order requiring the Landlord to return the Tenant's personal property.

The Tenant's application is dismissed, without leave to reapply.

Is the Tenant entitled to recover the filing fee?

As the Tenant was not entirely successful in their application, I find that the Tenant is not entitled to recover the filing fee. The Tenant's application is dismissed, without leave to reapply.

Conclusion

Section 72 of the Act allows me to set off monetary awards granted to each party and grant a monetary order for the remainder. Residential Policy Guideline #17 provides an explanation, it states:

Where both parties apply 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.

In this case, after the parties applications were partially granted, any amounts awarded to the parties are set off against each other, and for the remaining balance I grant the Landlord a Monetary Order in the amount of **\$5,291.62** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order to the Landlord for the Tenant's overholding under section 67 of the Act	\$4,128.57
a Monetary Order to the Landlord for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$4,293.86
a Monetary Order to the Tenant under sections 38(6) and section 67 of the Act	- \$3,130.81
Total Amount	\$5,291.62

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 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.

The Tenant's application requesting an order for the return of personal property is dismissed, without leave to reapply.

Both parties application for the recovery of the filing fee is dismissed, 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: June 6, 2025

Residential Tenancy Branch