

## **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 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

It also dealt with the Tenant's Application for:

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

I write this decision after the second hearing, which happened on June 12, 2025. I adjourned the first hearing on May 23, 2025, as the Tenant claimed they were at the hospital with their child. The Tenant agreed to provide evidence of this medical emergency which they did not submit to the Residential Tenancy Branch or the other party.

In my May 23, 2025, interim decision, I gave the Landlord permission to submit a new Monetary Order worksheet with a detailed breakdown of their claim.

### *Attendance*

#### First hearing

- Landlord M.R.B. attended for the Landlord.
- Tenant P.L.A. attended for the Tenant

#### Second hearing

- Landlord M.R.B. attended for the Landlord.
- No one attended for the Tenant.

## **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord testified they served the Tenant their Proceeding Package by email.

The Landlord submitted a copy of the tenancy agreement, which was signed by both parties, where both parties provided email addresses for service. The Landlord also provided a copy of the email being sent to the approved email addresses on March 14, 2025.

Based on the Landlord's evidence I find that email was a valid method of service for this tenancy under section 43 of the *Residential Tenancy Act Regulation*, B.C. Reg. 477/2003 (the Regulation). I also find that the Landlord sent the Tenant the email on March 14, 2025, based on the copy of the email the Landlord submitted.

Under section 44 of the Regulation, documents served by a pre-agreed email are considered received three days after they are sent.

Therefore, I find the Tenant is deemed to have received the Proceeding Package on March 17, 2025.

At the second hearing, the Landlord testified they had not received a copy of the Tenant's Proceeding Package. The Tenant provided no evidence they served the Landlord the Proceeding Package.

Rule 3.5 of the *Residential Tenancy Branch's Rules of Procedure* outlines what an arbitrator may do if they are not satisfied the respondent has been served the Proceeding Package. In such a case an arbitrator may adjourn the dispute or dismiss it with or without leave to reapply.

I am not satisfied the Tenant properly served the Landlord their Proceeding Package. Therefore, I dismiss the Tenant's application in its entirety without leave to reapply.

## **Service of Evidence**

The Landlord testified they served the Tenant their evidence by email.

The Landlord provided copies of the emails being sent to the approved email addresses on March 14, and June 5, 2025.

I find that the Landlord sent the Tenant the emails on March 14, and June 5, 2025, based on the copies of the emails the Landlord submitted.

Therefore, I find the Tenant is deemed to have received the Proceeding Package on March 17, and June 8, 2025.

At the second hearing, the Landlord testified they had only received the Tenant's photo evidence related to damage to the carpet. They also testified receiving this evidence after the hearing.

An applicant is obligated to prove service of their evidence to the satisfaction of an arbitrator, under rule 3.5 of the *Residential Tenancy Branch's Rules of Procedure*. The applicant has to serve their evidence so the respondent receives it fourteen days before the hearing. Rule 3.5 also allows an arbitrator to disregard evidence if they are not satisfied the respondent has been served.

I note my interim decision only allowed the Tenant to serve new evidence related to their medical emergency. Therefore, I am not satisfied the Tenant served the Landlord their evidence 14 days prior to the first hearing. As a result, I will disregard the Tenant's evidence in my decision.

## **Preliminary Issues**

### *Attendance*

The Tenant did not attend the hearing. 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 pursuant to Rule 7.3.

I conducted the dispute resolution hearing in the absence of the Tenant. I decided to proceed with the hearing having already determined the Tenant was served with the Proceeding Package. I also note the hearing was left open for 33 minutes after it was scheduled to begin giving the Tenant an opportunity to attend the hearing.

## **Issues to be Decided**

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 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 Tenant?

## **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.

All of the following testimony was given at the second hearing.

The Landlord testified the tenancy began on November 1, 2024, with a rent of \$2,200.00 due on the first of the month, and a \$1,100.00 security deposit.

The Landlord is claiming \$4,400.00 for lost rent and \$3,748.57 for damage to the rental unit.

The Landlord testified the tenancy was a fixed-term tenancy agreement from November 1, 2024, to November 1, 2025. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the tenancy ended on March 1, 2025, based on a 10 Day Notice served to the Tenant due to unpaid rent. The Landlord testified they already received a Monetary Order for unpaid rent owed up to March 2025.

The Landlord testified that their spouse conducted a move-out inspection with the Tenant on March 5, 2025. The Tenant refused to sign the report but gave the Landlord their forwarding address. The Landlord provided a copy of the condition inspection report.

The Landlord testified that the Tenant left the rental unit in poor condition. The rental unit was unclean and there was garbage left behind. The carpet smelled of smoke, and had burn marks and other stains. There were large nail holes in the walls. The master bedroom had permanent marker on the walls.

The Landlord provided pictures of the condition they claim the Tenant left the rental unit in.

The Landlord testified that new tenants refused to stay in the rental unit due to its condition. Although the Landlord advertised the unit soon after the tenancy ended, they could not rent it for 2 months. The unit remained vacant in April and May and was not rented until June 2025.

The Landlord testified they hired a cleaner to clean the rental unit. This work cost \$1,260.00. The Landlord provided an invoice.

The Landlord testified they hired a professional to clean the carpet. This cost \$420.00. However, the cleaning did not remove the burn marks or the smell. The Landlord testified they had to remove and replace the carpet to eliminate the smell. This cost \$1,829.00. The Landlord provided invoices for the cleaning and carpet replacement.

The Landlord testified they hired a painter to repair the nail holes and repaint the master bedroom due to the permanent marker. This cost \$239.00. The Landlord provided an invoice.

Residential Tenancy Branch records show the Landlord made this application on March 11, 2025.

## **Analysis**

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for damage to the rental unit or common areas.

I find the Tenant caused the following damage to the rental unit:

- left the rental unit in an unsanitary state,
- marked up the master bedroom's paint with a marker,
- left nail holes in the rental unit's walls, and
- damaged the rental unit's carpet.

I base my finding on the Landlord's testimony, their photos, and the condition inspection report.

I find the Landlord had to repair this damage to re-rent the rental unit.

I find the Landlord has shown that they had to clean the rental unit, replace the carpet, paint the master bedroom, and paint over the nail holes to restore the rental unit. I base this on the Landlord's testimony and their photos.

I find the Landlord's attempt to clean the carpet before replacing it was a reasonable effort to reduce their loss. Therefore, I also find the Landlord acted reasonably to minimize their loss.

I find the Landlord has proven that this work costed the following amount:

Carpet Cleaning	\$ 420.00
Carpet Install	\$ 1,829.10
Move out clean	\$ 1,260.00
Painting	\$ 239.47
Total	\$ 3,748.57

I base this finding on the Landlord's testimony and the invoices they provided.

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 Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$3,748.57.

**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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

I find the Tenant breached the tenancy agreement by ending the tenancy before the end of the fixed term. I base this on the tenancy agreement's fixed term clause.

I find the Landlord is owed compensation for the lost rent they would have received had the Tenant finished the fixed term.

I find the Landlord has established they lost \$4,400.00 in rent for March and April 2025. I base this on the Landlord's testimony.

I find the rental unit was in a condition that made it difficult to rent at the end of the tenancy. I base this on the Landlord's testimony and photos. I find the Landlord began advertising the rental unit in March 2025, soon after the tenancy ended. I base this on the Landlord's testimony. Therefore, I find the Landlord has shown they acted reasonably to minimize their loss.

I find the Landlord has established their claim for \$4,400.00 in compensation for under the Act.

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 Landlord is 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 \$4,400.00.

**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 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was provided on March 05, 2025, and the Landlord made their application on March 11, 2025, I find that the Landlord did make their application within 15 days of the tenancy ending.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord provided a copy of the condition inspection report for the move-in and move-out inspections. I find the report meets the requirements of the *Residential Tenancy Act Regulation*, B.C. Reg. 477/2003. Therefore, I find the Landlord's right to claim against the security deposit was not extinguished.

Given the Landlord's previous claims, I find they may retain \$1,100.00 of the Tenant's security deposit in partial satisfaction of their award.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security and pet damage deposits of \$1,100.00, plus interest, in partial satisfaction of the monetary award.

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

As the Landlord was 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 Landlord a Monetary Order in the amount of **\$7,148.57** under the following terms:

Filing Fee	\$ 100.00
Damage to Rental Unit	\$ 3,748.57
Lost Rent	\$ 4,400.00
Security Deposit	-\$ 1,100.00
Total	\$ 7,148.57

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. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The Tenant's application is dismissed in its entirety 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 17, 2025

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Residential Tenancy Branch