DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (the ***Act***) in response to cross applications from the parties.

In this decision, the terms “Landlord”, “Tenants”, and “Rental Unit” are defined terms; definitions are provided on the cover page of this decision.

The Landlord filed their application on March 13, 2025. In their application, the Landlord seeks the following:

- 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 Tenants’ 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*.

The Tenants filed their application on April 13, 2024. The Tenants seek:

- 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*.
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the *Act*.

The Landlord and tenant KJ attended the second hearing held in response to the parties’ application.

The Landlord the Tenants all attended the first hearing, held on May 26, 2025, at 11:00 AM, by conference call (the **First Hearing**).

Service of Records

After the First Hearing, I issued a written interim decision, dated May 26, 2025 (the **Interim Decision**). The Interim Decision must be read in conjunction with this decision.

In the Interim Decision I dealt with the service of the Landlord's Proceeding Package (application and evidence) to the Tenants. In short, I found the Landlord sufficiently served their records to the Tenants, by email, on March 25, 2025.

However, as I outlined in the Interim Decision, "I was not satisfied that the Landlord received the Tenants' Proceeding Package" by email. At the First Hearing, the Landlord agreed that, for the purposes of the current disputes, the Tenants may serve them records, for the purposes of the *Act*, by email. I then stated that "I am satisfied, on a balance of probabilities, based on the parties' testimonies during the hearing, that the Landlord received the Tenants' Proceeding Package, during the hearing."

I then adjourned the hearing to June 12, 2025, "to provide the Landlord an opportunity to review the Tenants' Proceeding Package and to submit any records necessary in response."

At the reconvened hearing, both parties acknowledged receipt of several new records from their counterparty, all of which were submitted to the Residential Tenancy Branch (the **Branch**) for my review.

The second hearing went ahead as scheduled, because I did not find any remaining issues respecting service of records. Neither party requested an adjournment at the start of the hearing.

Background and Evidence

I have reviewed and considered all oral and documentary evidence before me that met the requirements of the Branch's *Rules of Procedure*, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties agreed that:

- This tenancy began on August 31, 2023, and it ended on February 23, 2025.
- This tenancy ended pursuant to the Tenants' notice to end tenancy.
- When the Tenants provided their notice to end the tenancy, this tenancy was a periodic, month-to-month tenancy.
- The monthly rent was $3,000.00, due on the first day of every month.
- On August 15, 2023, the Tenants paid a $1,500.00 security deposit to the Landlord, which the Landlord retained after this tenancy ended.
- At the end of the tenancy, the parties did not reach an agreement with respect to any portion of the Tenants' security deposit.
- On February 26, 2025, the Landlord received the Tenants' forwarding address in writing from the Tenants.

The Landlord's and the Tenants' principal disagreement at the hearing was whether the Tenants provided notice to end their tenancy in accordance with the *Act*. The Landlord

testified that they first became aware of the Tenants' concrete intentions to vacate the Rental Unit by February 28, 2025, on February 2, 2025.

The Landlord submitted copies of their email correspondence with KJ from January 2025 and February 2025 and referred me to an email sent to them by KJ on January 14, 2025 (the **First KJ Email**). In the First KJ Email, I can see the following statement from KJ:

> I wanted to let you know that [DC] and I will be moving back to [suppressed for privacy]. We have no concrete plans yet, but are aiming that we would be out of here by March 1.
>
> [para. suppressed for relevance]
>
> Re firm notice, we can work with move out by Feb 28.
>
> Thanks, and let me know if you'd like to chat on this one!
>
> [remaining paras. suppressed for relevance]

I can see an email from the Landlord to KJ, sent in response to the First KJ Email, dated January 14, 2025, wherein the Landlord stated: "to confirm: you are giving notice to end tenancy on at the end of February 2025." The Landlord then asks KJ about access to the Rental Unit for showings.

I can see another email from the Landlord, dated January 14, 2025, to KJ, sent after the above email, wherein the Landlord stated that "[…] however I need your confirmation regarding your end of tenancy date. Please see my previous email below."

I can see an email sent to the Landlord by KJ, in response to the above email, dated January 14, 2025, wherein KJ stated: "Pending final completion of the new rental agreement, our tenancy would end Feb 28, 2025." (the **Second KJ Email**).

I can see an email from the Landlord to KJ, dated February 2, 2025, wherein the Landlord stated: "To confirm: I have not received formal notification of your tenancy intensions to date. Kindly advise, thank you."

In their response email, dated February 2, 2025, KJ stated to the Landlord that "we confirmed last month by email that end of Feb would be end of tenancy." In this email, KJ also stated "Re viewings, we can accommodate any times, during this month."

The Landlord submitted a copy of a signed letter from the Tenants to the Landlord, dated February 2, 2025, wherein the Tenants state "Pursuant to our emails dated January 13, 2025 and January 14, 2025, I am providing this signed letter to further confirm that we are ending our tenancy at [the Rental Unit]". The Landlord testified that they received the notice by email on February 4, 2025.

KJ testified that their intentions were clearly communicated to the Landlord in January 2025, including in the First KJ Email and the Second KJ Email.

KJ testified that in the third week of January 2025 their new tenancy was finalized, and they communicated the same to the Landlord, but they cannot recall the method of communication. The Landlord testified that KJ never informed them of the finalization of their new lease in January 2025.

With respect to mitigation efforts, the Landlord testified that:

- Starting in early February 2025, they began listing the Rental Unit on online platforms such as Craigslist.ca and Rentals.ca.
- Copies (screenshots) of their online advertisements are not submitted as evidence.
- On February 16, 2025, they had one in-person showing (the **February Showing**) and one cancellation.
- They stopped advertising the Rental Unit on online platforms in early March 2025.
- On February 26, 2025, they hired a property manager and after consistent showings, their property manager found a tenant for the Rental Unit with a term beginning on May 1, 2025.

In response, KJ testified that:

- In February 2025 and March 2025, the Tenants monitored “every rental site”, including Craigslist, Kijiji, rentals, and others, and they never saw an advertisement for the Rental Unit.
- They are unsure where the Landlord found the one individual that viewed the Rental Unit in February 2025.
- Either the no show or the February Showing took place “a few days before the end of the tenancy”, but they cannot recall which.

The Landlord testified that they found the individual for the February Showing on Craigslist, and that, “at that time [February 16, 2025]”, they had not yet posted the Rental Unit on rentals.ca. The Landlord testified that they began posting the Rental Unit on rentals.ca after February 28, 2025.

The Landlord testified that they are seeking compensation in the amount of $3,000.00, for their loss of rental revenue in March 2025.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has the responsibility to provide evidence over and above their testimony to prove their claim.

The standard of proof in this tribunal is balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Was the Landlord authorized to retain the Tenants' security deposit and to file a claim against it?

In this case it is not necessary to determine whether the Landlord extinguished their rights in relation to the Tenants' security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord's claim is in relation loss of rental revenue, which is not damage.

Section 38 of the *Act* sets out specific timing requirements for dealing with deposits at the end of a tenancy. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit, file a claim against it, or reach an agreement with the Tenants to keep some or all the Tenants' security deposit.

The parties agreed that this tenancy ended on February 23, 2025, and that the Landlord received the Tenants' forwarding address, in writing, on February 26, 2025. Therefore, the Landlord had 15 days from February 26, 2025, to reach an agreement with the Tenants respecting the security deposit, to file a claim with the Branch or to return the security deposit to the Tenants. The Landlord filed their claim with the Branch on March 13, 2025, within the 15-day statutory timeframe outlined under section 38 of the *Act*.

Therefore, the Landlord complied with the timing provisions of section 38 of the *Act* and the doubling provisions of the *Act* do not apply.

I will make any orders necessary, respecting the Tenants' security deposit, under the "Conclusion" section of this decision.

Is the Landlord entitled to a Monetary Order for loss of rental revenue?

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

The Branch's Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove:

- That the respondent failed to comply with the *Act*, the *Regulation* or the tenancy agreement.
- That Loss or damage resulted from the respondent's noncompliance.
- The amount of or value of the damage or loss.
- That they acted reasonably to minimize that damage or loss.

I find, based on my review of the parties' tenancy agreement, in January 2025, this tenancy was a month-to-month tenancy. This issue was not in dispute at the hearing and the parties agreed that, when this tenancy ended, the tenancy was a month-to-month tenancy.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

At the hearing, it was KJ's position that the Tenants abided by the above section in January 2025. Schedule 12 of the *Residential Tenancy Regulation* states:

> **Ending the tenancy**
>
> 12(1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.
>
> *[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]*
>
> 12(2) This notice must be in writing and must
>
> a) include the address of the rental unit,
> b) include the date the tenancy is to end,
> c) be signed and dated by the tenant, and
> d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

The above requirements are also codified under section 45(4) of the *Act*.

During and after the hearing I reviewed the parties' email correspondence (partially copied in the previous section of my decision), in detail. It goes without saying that none of the Tenants' emails in the month of January 2025 comply with the form and content requirements of section 52 of the *Act* and Schedule 12(2) to the *Residential Tenancy Regulation*. These emails are not signed, and they do not include the Rental Unit's

address. Further, and most importantly, the Tenants fail to provide the date the tenancy is to end (the effective date of their notice).

On January 14, 2025, KJ stated that they "have no concrete plans yet" and that they "can work with move out by Feb 28". In response, the Landlord appears to initially understand KJ's email as a notice to end tenancy for the end of February 2025, but on the same date as the First KJ Email, they ask for "your confirmation regarding your end of tenancy date", a reasonable request considering the unclear nature of the First KJ Email. In response, KJ sends the Second KJ Email, on the same date, wherein they state, "Pending final completion of the new rental agreement, our tenancy would end Feb 28, 2025."

KJ testified that in or about the third week of February 2025, their new tenancy finalized, and they informed the Landlord of the same, but they could not recall how this was communicated to the Landlord. The Landlord testified that it was never communicated to them. When two parties provide equally plausible testimonies regarding an event, the party making the claim has the responsibility to provide evidence above and beyond their testimony to substantiate the claim. KJ neither recalled the mode of the purported communication, nor were they able to provide evidence beyond their testimony to substantiate their claim. I find, on a balance of probabilities, the Tenants did not communicate to the Landlord, in the month of January 2025, that their new tenancy agreement with their new landlord was finalized.

Based on the evidence before me, namely KJ's emails on February 2, 2025, and February 4, 2025, as well as the Landlord's testimony, the first time the Landlord received a concrete date about the end date of this tenancy was on February 2, 2025. Consequently, I find the Tenants breached section 45(1) of the *Act* by failing to provide the Landlord with a notice to end tenancy, compliant with section 52 of the *Act*, in January 2025.

As outlined above, every party seeking compensation under the *Act* must prove that they mitigated their losses. The Landlord is seeking $3,000.00 from the Tenants for their loss of rental revenue in the month of March 2025.

The Branch's Policy Guideline three provides the following guidance in such circumstances (underlined by me for emphasis):

> In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the *RTA* and the *MHPTA*). A landlord's duty to mitigate the loss includes rerenting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

Policy Guideline five provides guidance on the steps a claimant must take to minimize their loss(es):

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and commonsense steps to prevent or minimize avoidable damage or loss.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

The person claiming compensation has the burden of proving they minimized the damage or loss. If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied.

In this case, evidence of steps taken to rent the rental unit is limited. The Landlord provided conflicting testimony regarding the websites used to advertise the Rental Unit in the month of February 2025. They initially testified that Craigslist.ca and Rentals.ca were utilized in early February 2025, when they became notified of the Tenants' concrete plans. In response to KJ's testimony, they testified that Rentals.ca was not used until after February 28, 2025.

The Branch does not dictate the websites or methods that a landlord must use to re-rent a Rental Unit. What is required is evidence of the steps taken. In this case, considering the Landlord's unclear and, at times, inconsistent testimony at the hearing, it is difficult to accept that the Landlord began advertising the Rental Unit on Craigslist.ca in "early February 2025". The Landlord did not provide an exact date or any external evidence showing the purported advertisement.

The Landlord testified that in early March 2025 they stopped advertising the Rental Unit on online platforms and instead hired an agent. However, they also testified that they were advertising the Rental Unit on rentals.ca after February 28, 2025. This is another conflicting statement that I have considered in making my decision.

The Landlord referred to an agent they hired after the Tenants vacated the Rental Unit. The agent did not attend the hearing to provide evidence. The Landlord did not refer me to any agency agreements outlining the agent's scope of work. The Landlord testified that their agent showed the Rental Unit to interested parties, consistently, in the month of March 2025.

Even if I accept the Landlord's testimony, in full, regarding the steps taken by the Landlord and their agent in the month of March 2025, based on the evidence before me regarding the steps taken to re-rent the Rental Unit in the month of February 2025, namely the Landlord's partially self-contradicted testimony regarding which websites they used and on what dates, I cannot find the Landlord to have fully mitigated their losses in this case.

It is plausible in this case that the Landlord never advertised the Rental Unit on online platforms in the month of February 2025, because KJ testified that they were monitoring "every rental site", including Craigslist, Kijiji, rentals, and others, and they never saw an advertisement for the Rental Unit. While this is plausible, I do not find it to be likely in this case. Based on the evidence provided by both parties, it is obvious that the Landlord did take some steps to re-rent the Rental Unit. This is evidenced by the fact that on or about February 16, 2025, the Landlord showed the Rental Unit to an interested party and both parties agreed that there were other interested parties that canceled their appointments.

Based on the above, I find it is more likely than not that the Landlord was advertising the Rental Unit on at least one platform, or taking other steps to re-rent the Rental Unit, but it is unclear on what terms and when the advertisement went live.

The Branch's Policy Guideline five provides the following guidance regarding partial mitigation:

> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

Based on all the above, I find the Landlord proved that they took some, but not all reasonable steps to minimize the damage or loss in this case.

Policy Guideline 16 states that an arbitrator may award nominal damages where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case I found the Tenants breached section 45(1) of the *Act*, but the Landlord was only able to prove partial mitigation of their losses by taking some steps to re-rent the Rental Unit for March 2025, but not all reasonable steps in the circumstances.

Pursuant to section 67 of the *Act*, I award the Landlord $1,000.00 in nominal damages as a minimal award for their loss of rental revenue in the month of March 2025.

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

The Landlord's application to retain the Tenants' security deposit is partially granted. The parties agreed that the $1,500.00 deposit was paid to the Landlord on August 15, 2023. The amount of interest that accrued on $1,500.00, from August 15, 2023, to June 20, 2025, is $58.85.

Under section 72 of the *Act*, I allow the Landlord to retain $1,000.00 from the Tenants' $1,558.85 security deposit and interest. I will issue the Tenants a Monetary Order in the amount of $558.85 for the return of the balance of their security deposit and interest.

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

Both parties were partially successful in their claims. Both parties will bear the cost of their own applications.

Conclusion

Pursuant to section 67 of the *Act*, I award the Landlord nominal damages in the amount of $1,000.00, for loss of rental revenue in the month of March 2025 as a result of the Tenants' breach of section 45(1) of the *Act*.

Under section 72 of the *Act*, I allow the Landlord to retain $1,000.00 from the Tenants' $1,558.85 security deposit and interest.

The Tenants' application for the return of their security deposit is partially granted. Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order for the return of a portion of their security deposit, in the amount of $500.00, plus accrued interest in the amount of $58.85, calculated on $1,500.00, from August 15, 2023, to June 20, 2025.

Both parties were partially successful in their claims. Both parties will bear the cost of their own applications.

The Tenants are provided with the attached Monetary Order in the above terms and the Landlord must be served with the Order as soon as possible. Should the Landlord 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.

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 20, 2025

Residential Tenancy Branch