

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's 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
- an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- A Monetary Order for for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Authorization to retain security and/or pet damage deposit under section 72 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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

Both parties acknowledged receipt of the Proceeding Packages and accompanying evidence and raised no concerns regarding the nature or timing of service.

### **Background and Evidence**

On June 22, 2025, a Tenancy Agreement was signed for a fixed term from July 1, 2025, to November 16, 2025.

The Tenant reports that upon moving into the rental unit on June 30, 2025, the premises were unclean and exhibited a cockroach infestation. According to the Tenant, both

cleaning staff and pest control professionals confirmed the presence of cockroaches, including live insects emerging from drains and walls.

Due to health concerns and the risk of contamination to her belongings, the Tenant chose to vacate the unit immediately. She asserts that she felt misled, as the infestation had not been disclosed to her despite the Landlord's prior pest control treatments. Although alternative units were offered by the Landlord she declined the offer.

On July 4, 2025, the Tenant provided her forwarding address via email to the Landlord.

On July 4, 2025, the Tenant made an application for dispute resolution seeking compensation of \$6,280.28, return of a large white mirror, and a declaration that the tenancy ended due to a frustrated tenancy agreement.

The Tenant's request for compensation is related to the following:

- Missed work and requirement to re-move: \$919.00
- Soiled freezer/fridge food: \$200.00
- Moving expenses: \$200.00
- Furniture deposit: \$300.00
- Cancelled apartment insurance: \$240.00
- Hotel cost: \$131.00
- First month rent: \$2,000.00
- Pet deposit: \$1,145.00
- Security deposit: \$1,145.00

The Tenant submits that in her rush to evacuate the unit she forgot a large white mirror. In the hearing the Landlord's advised that they would check the unit for it and return it.

On July 9, 2025, the Landlord applied for dispute resolution seeking compensation of \$7,018, representing lost rent from August to November, and to retain of \$1,145 from the security deposit.

The Landlord submits that a cockroach issue was identified approximately three weeks prior to the original Tenant's move-in and was treated professionally by Ace Pest Control. Additionally, the Landlord states that the unit was professionally cleaned before occupancy, was in habitable condition, and that the Tenant's response to the situation was disproportionate. Accordingly, the Landlord asserts that the Tenant terminated the fixed-term tenancy prematurely and without lawful justification under the Residential Tenancy Act.

The Landlord further submits that the Tenant signed the condition inspection report and began moving her belongings into the unit, which they argue constitutes acceptance of the unit's condition at the time. In response, the Tenant states that the cockroach

infestation was not immediately visible and only became apparent after disturbing certain areas of the unit.

Upon being notified of the Tenant's concerns, the Landlord offered alternative accommodations, including a larger and more expensive unit at the same rental rate; however, the Tenant declined this offer.

On July 3, 2025, a new tenant moved into the original unit under a tenancy agreement lasting from July 3, 2025, to September 30, 2025. This new agreement included a clause allowing the tenant to terminate the tenancy early by providing notice by July 7, 2025. The new tenant moved out on July 31, 2025. The Landlord submits that they received no complaints from the new tenant regarding any pests.

## **Analysis**

### **Is the Tenant entitled to compensation for damage or loss?**

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 7 of the Act states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord 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 tenant acted reasonably to minimize that damage or loss

Upon consideration of the evidence submitted by the Tenant, I find that the Landlord did not fail to comply with the Residential Tenancy Act, its regulations, or the tenancy agreement. While it is not ideal to begin a tenancy under conditions involving a pest infestation, the Landlord demonstrated a reasonable commitment to addressing the issue by arranging for pest control treatment both prior to the commencement of the tenancy and again after the Tenant vacated the unit.

Furthermore, the Landlord made efforts to mitigate the Tenant's loss by offering alternative accommodation while the original unit was undergoing treatment. The Tenant declined these alternative arrangements. In doing so, I find that the Tenant did not act reasonably to minimize her damages or losses, as required under the Act.

While the Tenant submitted that she had been informed that the infestation was significant and likely widespread, there is no professional documentation or expert opinion submitted into evidence to support this assertion.

Accordingly, the Tenant's application for compensation under Section 67 of the Residential Tenancy Act is dismissed, without leave to reapply.

### **Should the Landlord be ordered to return the Tenant's property?**

Section 65 of the Residential Tenancy Act provides that an arbitrator may order the return of personal property that has been seized or retained by a landlord in contravention of the Act or the tenancy agreement. Furthermore, Part 5 of the Residential Tenancy Regulation establishes that a landlord is required to store a tenant's personal property for a minimum of 60 days if the property has been left behind for one month and has a market value of \$500.00 or more. If the tenant claims the property before it is disposed of, the landlord may require reimbursement for reasonable costs associated with the removal and storage of the property, and may also require the tenant to satisfy any outstanding amounts owing under the tenancy agreement or the Act.

During the hearing, the Landlord indicated a willingness to search for and return the mirror in question. As such, I find that there has been no current breach of the Act, the regulations, or the tenancy agreement. The Tenant's application for an order requiring the return of the mirror is therefore dismissed, with leave to reapply. Should the Landlord fail to return the mirror within a reasonable time, the Tenant may pursue further dispute resolution.

### **Was the Tenancy frustrated?**

Section 44(1)(e) of the *Residential Tenancy Act* provides that a tenancy ends if the tenancy agreement is frustrated.

According to Residential Tenancy Policy Guideline 34, frustration occurs when, through no fault of either party, the contract becomes incapable of being performed due to an unforeseen event that so fundamentally alters the nature of the agreement that its fulfillment as originally intended is rendered impossible. In such cases, both parties are discharged from their contractual obligations.

While a pest infestation, such as a cockroach problem, may be distressing and disruptive, it is generally considered a remediable issue. As such, it does not meet the threshold for frustration of contract. Therefore, the existence of a bug infestation alone would not constitute sufficient grounds to find that the tenancy agreement was frustrated under the Act.

### **Is the Landlord entitled to compensation for damage or loss?**

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Section 7 of the Act states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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

Section 45 of the Act states that a tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

In this case, the Tenant failed to end the tenancy in accordance with Section 45 and thereby breached both the Act and the terms of the Tenancy Agreement.

However, the Landlord entered into a new tenancy agreement on July 3, 2025, for the period of July 3, 2025, to September 30, 2025, with a different tenant. This agreement included a clause permitting early termination if the new tenant gave notice before July 7, 2025. The new tenant exercised this clause and ended the tenancy effective July 30, 2025.

The Landlord has not provided sufficient evidence to demonstrate that reasonable efforts were made to secure a longer-term tenancy. Furthermore, the Landlord has not established that the early termination of the subsequent tenancy was unrelated to ongoing pest issues in the unit. Given these circumstances, I find that the Landlord's decision to enter into a short-term tenancy agreement with an early termination option reflects a failure to reasonably mitigate potential losses.

Accordingly, the Landlord's application for compensation for lost rental income is dismissed, without leave to reapply.

**Is the Landlord authorized to retain the security/ and or pet damage deposit?**

As the Landlord's application for compensation has been dismissed, the Landlord is not authorized to retain the security deposit and/or pet deposit in relation to this dispute. Accordingly, the Landlord's application to retain the deposits is dismissed, without leave to reapply.

Section 62 of the Act provides that the director has authority to resolve any matters related to that dispute that arise under this Act or a tenancy agreement. As such I find it appropriate to use this discretion in regard to making an order for the return of the Security Deposit.

The Landlord has acknowledged receipt of the Tenant's forwarding address, as evidenced by their own submission of an email. Therefore, pursuant to the *Residential Tenancy Act*, I order the Landlord to return the Tenant's security deposit in the amount of \$1,145.00. The Tenant is granted a Monetary Order in this amount.

### **Should either party be granted authorization to recover the filing fee for this application?**

As both parties were unsuccessful in their respective applications, I find that neither party is entitled to recover their dispute resolution filing fees.

### **Conclusion**

The Landlord's application is dismissed, in full, without leave to reapply.

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I grant the Tenant a Monetary Order in the amount of \$1145.00. The Tenant is provided with this Order and the Landlord must be served with this 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).

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: August 28, 2025

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Residential Tenancy Branch