

## **DECISION**

### **Introduction**

This hearing dealt with the landlord's Application for Dispute Resolution (Application) 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 recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the tenant's Cross-Application under the Act for:

- 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
- recovery of the interest accrued on their security deposit
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

### **Service of Notices of Dispute Resolution Proceeding (Proceeding Package), Evidence, and Amendments to the Applications (Amendments)**

Although the service of documents was an issue at the first hearing, all service issues were remedied by the parties during the first adjournment. At the reconvened hearing on June 12, 2025, the parties acknowledged that the documentary evidence before me as well as the Proceeding Packages and Amendments had been served in compliance with my Orders, the Act, and the Residential Tenancy Branch Rules of Procedure (Rules).

The hearing of the Applications, as amended, therefore proceeded as scheduled and I accepted the documentary evidence before me from both parties for consideration.

### **Issues to be Decided**

Is the landlord entitled to recover unpaid or lost rent?

Is the landlord entitled to compensation for damage caused to the unit?

Is the landlord entitled to compensation for damage caused to the unit?

Is the tenant entitled to compensation for monetary loss or other money owed?

Is the tenant entitled to compensation for monetary loss or other money owed?

Is the tenant entitled to the return of all or part of their security deposit?

Are the parties entitled to recover their filing fees from each other?

## **Background and Evidence**

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

The tenancy agreement provided states that this tenancy began on November 1, 2021, with a monthly rent of \$2,450.00, due on the first day of the month, with a security deposit in the amount of \$1,225.00. At the hearing, the landlord confirmed that the deposit was paid on October 10, 2021. The tenant did not dispute this. The parties also agreed that the security deposit was used by the tenant to pay a portion of their rent in August of 2025. Only the initial amount of the security deposit was credited towards rent, without interest.

On the whole, the parties were in opposition to each other on almost all things and it was clear to me during the hearings that they have a very contentious relationship with each other. They disagreed about:

- the state of the rental unit at the start of the tenancy;
- when the move-in condition inspection was conducted and whether it was accurate;
- whether the tenant gave proper notice to end the tenancy and therefore whether the landlord was entitled to lost rent;
- whether the tenant caused damage to the rental unit;
- whether the tenant left the rental unit reasonably clean at the end of the tenancy; and
- whether the landlord properly scheduled a move-out condition inspection.

The landlord stated that the rental unit was in good condition at the start of the tenancy and that the tenant signed off on the condition as shown in the move-in condition inspection report. The tenant and their witness disagreed, stating that it was not clean and that the move-in condition inspection was inaccurate as it was too dark to see things clearly given the time of day and the lack of lighting in the unit. The parties agreed that the tenant was reimbursed \$120.00 for carpet cleaning that occurred near the beginning of the tenancy, which they argued showed that the unit had not been

properly cleaned. The landlord disagreed stating that they had been pestered by the tenant to reimburse them, so they did. However, as part of their Application they sought recovery of this amount from the tenant.

Although the parties reached a written agreement to increase the rent from \$2,586.00 to \$2,836.00, they could not agree on when this rent increase took effect. The landlord stated that it began July 1, 2024, whereas the tenant stated that it began the month prior on June 1, 2024. The landlord acknowledged that they did not give the tenant three months notice or issue a Notice of Rent Increase form, however, they stated that they followed the direction on the website. A screen shot of the applicable section of the Residential Tenancy Branch (Branch) website was submitted. The tenant sought \$750.00, calculated at \$250.00 per month in June, July, and August of 2024. The landlord denied unlawfully increasing rent and therefore argued that no rent refund was owed, especially for August where the tenant did not even pay full rent.

The tenant stated that they texted the landlord on July 19, 2024, advising them that they had viewed and applied for a different rental unit and that they had a follow-up phone call with the landlord about this. The parties disputed whether the landlord told the tenant that no written notice to end their tenancy was required. The tenant stated that the landlord explicitly told them that no written notice was required on multiple occasions. The landlord denied this stating that they would never advise and have never advised a tenant that no written notice was required to end a tenancy. The landlord stated that they even asked the tenant if they would be giving written notice to end the tenancy for September 1, 2024, and they stated that they would.

The parties disagreed about when this tenancy was set to end. The tenant stated that their new rental unit was available August 1, 2024, but that they wanted two weeks of overlap so it was agreed that the tenancy would end on August 15, 2024. The tenant stated that they ultimately vacated the rental unit on August 9, 2024. The landlord disagreed stating that they were advised by the tenant that they could not get their new rental unit until August 15, 2024, and therefore the tenancy would end on September 1, 2024, as the tenant wanted two weeks of overlap. The landlord stated that as a result, the rental unit was originally advertised as available September 1, 2024. the tenant later changed their mind on this, which is not their fault, and kept harassing them to change the end date for their tenancy to the 15<sup>th</sup>, so they reluctantly did.

The landlord stated that the rental unit was ultimately re-rented at \$2,950.00 for a tenancy starting September 15, 2025. The landlord argued that they mitigated their loss by advertising the rental unit right away, changing the available date for occupancy to an earlier date upon the tenant's request, and advertising it at a reasonably economic rental rate. The tenant disagreed stating that the landlord is being greedy and although they found tenants willing to occupy the unit for August 24, 2024, they chose to keep showing the unit to other prospective new tenants, and ultimately the interested party found something else. They also accused the landlord of unreasonably increasing the rental rate.

The landlord stated that as the tenant only paid them \$879.04 via e-transfer on August 2, 2024, and told them to use the \$1,225.00 security deposit towards the remaining amount owed for a total of \$2,104.04. The landlord stated that while they did not give the tenant permission to use the security deposit for rent in advance, ultimately, they had to use it to pay their own mortgage as the tenant only sent them the \$879.04. The landlord stated that the tenant therefore owes them the remaining \$731.96 for August as they did not give a proper written one month notice to end their tenancy and did not pay full rent for August. The tenant disagreed stating that they had agreed to split the difference and the amount paid to the landlord, including use of the security deposit, covers their obligations. The landlord disagreed stating that while they had discussed various options, nothing was ever agreed to. As no interest was calculated on the security deposit when it was used towards August rent, the tenant sought recovery of any interest owed, which they calculated at \$60.75.

Although the parties agreed that no move-out condition inspection was completed together, they disagreed about why. The tenant argued that the landlord never properly scheduled one with them and asked them to drop the keys off with someone else. The landlord disagreed stating that they texted the tenant twice on August 13, 2024, advising them that they needed to do a walk-through and that the tenant told them that they would get back to them. The landlord stated that the tenant then contacted them on August 21, 2024, stating that they wanted to come turn in the keys, but as they have to take a ferry to get to the rental unit and had work priorities, they were unable to go that day. As a result, they arranged for the tenant to drop the keys off with someone. The landlord stated that they then contacted the tenant by email on August 26, 2024, and September 4, 2024, attempting to schedule the condition inspection, which the tenant did not respond to. The landlord stated that they presumed the tenant was foregoing the inspection and they moved forward with the re-rental of the unit.

The landlord stated that the tenant caused damage to the rental unit and failed to leave it reasonably clean at the end of the tenancy. They sought \$262.50 for a chip to the countertop, between \$730.18-\$1,380.03 for replacement of broken doors, and \$173.25 for carpet cleaning at the end of the tenancy as a result. The tenant denied failing to leave the rental unit reasonably clean and denied causing any damage.

The tenant sought \$150.00 in compensation for loss of use and loss of quiet enjoyment as the balcony of the unit was undergoing renovations for several weeks. They stated that during that time they could not use the balcony and all their balcony furniture needed to be stored inside, impacting their use and enjoyment of the rental unit. The landlord denied that this compensation is owed, stating that the balcony renovations were not within their control as this is a strata building and that these pending renovations were disclosed from the start. The landlord also called into question the amount being sought, as the tenant provided no calculation for how they arrived at this amount, and that prior to the hearing they had never been advised of anything by the tenant in relation to this claim.

Finally, the landlord sought recovery of a \$50.00 late rent fee, \$120.00 previously paid to the tenant in February of 2022 for carpet cleaning, and recovery of \$53.08 in mailing costs for the service of documents. Both parties also sought recovery of their respective filing fees.

## **Analysis**

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party with the burden of proof is responsible for providing evidence over and above their testimony to prove their claim. In this case, the parties bear the burden of proof, on a balance of probabilities, in relation to their own claims.

### **Is the landlord entitled to recover unpaid or lost rent?**

To determine whether the landlord is entitled to the amount claimed for lost or unpaid rent, I must first determine what amount of rent was due under the tenancy agreement each month at the time the tenancy ended. Although the parties agreed that the rent was increased from \$2,586.00 to \$2,836.00 in the summer of 2024, they could not agree on when or whether this rent increase was permitted under the Act. Having reviewed the written agreement for the rent increase, I am satisfied that it started July 1, 2024. However, no notice of rent increase form was used and the tenant was not provided with three months notice of the rent increase, as the agreement was signed at the start of May 2024. The landlord argued that they followed the directions on the website, which made no mention of a form or a three month notice requirement. A screenshot of the portion of the website relied upon by the landlord was provided.

The screenshot submitted shows only a portion of the information publicly available about rent increases. On that same page of the website, it also states the following:

#### **Tenants must get at least 3 months' notice**

Landlords must provide tenants with three full months notice of a rent increase. This written notice must include:

- The exact dollar amount of the increase
- The date the rent increase goes into effect

Landlords must use the [Notice of rent increase \(PDF, 636KB\)](#) - Form RTB-7 to let tenants know about rent increases.

Residential Tenancy Policy Guideline (Guideline) 37B, section D provides information on agreed upon rent increases. Guideline 37B states that in addition to getting the agreed upon rent increase in writing, a Notice of Rent Increase must still be issued to the tenant three full months before the increase goes into effect.

Regardless of the above, it is the Act which governs the parties about rent increases. At the hearing the landlord acknowledged that they looked only at the website. From this I infer that they did not review the applicable sections of the Act. They also explicitly stated that they had not reviewed Guideline #37B about agreed rent increases. Section 42(2) of the Act states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the Act states that a notice of rent increase must be in the approved form. The approved form is the #RTB-7 Notice of Rent Increase Residential Rental Units. Section 43 of the Act sets out what types of rent increases may be imposed, including rent increases agreed to by the parties, as set out under section 43(1)(c) of the Act. The requirements set out under section 42 apply to all types of rent increases covered under section 43(1) of the Act, not just annual rent increases calculated in accordance with the regulations.

As the landlord did not give three months notice of the rent increase and did not use the required form, I find that they breached sections 42(2) and 42(3) of the Act. As a result, I find that the rent increase imposed was unenforceable and contrary to the Act, even though the tenant agreed to it in writing and paid the increased amount. I therefore find that the rent amount payable remained at \$2,586.00, the amount the parties agreed at the hearing was owed each month prior to the unlawful rent increase.

Having made this finding, I will now turn to whether the landlord has established a claim for unpaid or lost rent. The parties agreed that written notice to end the tenancy was not given. The text messages before me also support that the tenant first notified the landlord that they may be ending their tenancy on July 19, 2024. As a result, the earliest date that the tenant could have lawfully ended their tenancy under section 45(1) of the Act even if they had given proper written notice, was August 31, 2024. Although the tenant argued that the landlord had explicitly advised them that written notice was not required, the landlord categorically denied this and the tenant submitted no documentary or other corroboratory evidence to support their position. As a result, I do not accept that any such agreement was reached and find that the tenant breached section 45(1) of the Act. I also find that the tenancy was set to end on August 31, 2024, despite the tenant's claim to the contrary. In a text sent to the tenant from the landlord on July 20, 2024, the landlord stated that the unit was posted as being available for September 1, 2024, or potentially sooner, as discussed, to which the tenant replied "ok perfect." I therefore find the landlord's testimony regarding when the tenancy was set to end more reliable, and accept that the tenant vacated the rental unit early.

I dismiss the tenant's claim that an agreement was reached with the landlord for them to pay only partial rent for August. While it is clear from the text messages before me that the parties entered into negotiations about what was owed for August after the tenant changed their mind about when they were going to vacate the rental unit, it appears from these texts that no agreement was ever reached. I also dismiss the tenant's argument that the landlord failed to mitigate their loss. It is clear to me from the text messages and other documentary evidence before me that the landlord acted diligently to get the rental unit re-rented at a reasonably economic rental rate. They posted advertisements expediently based on the initially agreed upon end date for the tenancy,

and even changed the advertised occupancy date when the tenant changed their mind and vacated early. While the landlord did post the rental unit for more than the tenant was currently paying, they were entitled to do so as this was a month-to-month tenancy and the rent being paid by the tenant was not in line with current market rates any longer. I also do not find the advertised rate to be unreasonable and note that the landlord was able to secure a new tenant at that rate for September 15, 2024. As the landlord is not seeking lost rent for September, I do not find this to be unreasonable.

As a result of the above, I find that the tenant was responsible for full August 2024 rent. As rent at the time the tenancy ended was \$2,586.00, and the landlord only received \$2,104.04 from the tenant for August, including credit for the security deposit, I find that they therefore owe the landlord \$481.96 in unpaid rent for August 2024.

### **Is the landlord entitled to compensation for damage caused to the unit?**

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulation, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

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.

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As set out in Guideline 1, tenants are not responsible for reasonable wear and tear or for cleaning the premises to a higher standard than that set out in the Act. They are also not responsible for repairing damage that pre-existed the start of the tenancy.

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; and
- the landlord acted reasonably to minimize that damage or loss.

I am satisfied based on the move-in condition inspection report that the rental unit was clean and undamaged at the start of the tenancy, except for two countertop chips to the left of the stove and some water damage above the fridge. Although the tenant denied this, they signed the condition inspection report and checked the box agreeing that it fairly represents the condition of the rental unit. Section 21 of the Regulation states that in dispute resolution proceedings, a condition inspection report completed in accordance with the Act and Regulation is evidence of the state of repair and the

condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary.

While the tenant disputes the accuracy of the report, I do not find that their documentary evidence and the testimony provided by them and their witness, which was given almost four years after the start of the tenancy, to be a preponderance of evidence to the contrary. If the tenant could not accurately ascertain the condition of the rental unit at the time of the inspection, for whatever reason, they should not have agreed that the condition inspection report was accurate. As that report was completed on October 29, 2021, I find it to be the best evidence before me of the general condition of the rental unit at the start of the tenancy.

I accept the photographs submitted by the landlord showing damaged doors and a chip in the countertop in a location other than those noted on the move-in condition inspection report. I therefore find the tenant responsible for the costs associated with repairing this damage, as I do not find that it constitutes reasonable wear and tear. Although multiple quotes were submitted for the doors, I grant the landlord the amount shown in the first quote dated September 17, 2024. This amount is \$730.18, the lowest amount of all three quotes. While the other quotes are more recent (March 19, 2025, and May 26, 2025) this tenancy ended in August of 2024. If the landlord chose to delay these repairs, they therefore did not take reasonable steps to mitigate their loss and I find that the tenant should therefore not be responsible for the increased costs of almost double the originally quoted amount, due to the delay. I also grant the landlord the \$262.50 sought for repair of the countertop chip. In total, I grant the landlord \$992.68 for damage repair costs.

While the landlord also sought recovery of \$173.25 in carpet cleaning costs incurred at the end of the tenancy, they did not properly schedule or complete a move-out condition inspection or report with the tenant. They did not offer a final opportunity on the approved Branch form, #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection as required by section 35(2) of the Act. They also did not complete a move-out condition inspection report as required by section 35(2) of the Act and permissible in the tenant's absence under section 35(5) of the Act. As a result, I find that they have failed to satisfy me on a balance of probabilities that the carpet cleaning was required because of a breach of the Act, Regulation, or tenancy agreement by the tenant. I therefore dismiss this portion of their claim without leave to reapply.

### **Is the landlord entitled to compensation for monetary loss or other money owed?**

Although the landlord sought \$50.00 for a late rent payment fee, section 7(1)(d) of the regulation restricts late rent fees to no more than \$25.00. As a result, I find that this amount is contrary to the Regulation. Section 5 of the Act states that landlords and tenants cannot contract out of the Act or the Regulations and that any attempt to do so is of no effect. As a result, I dismiss the landlord's claim for recovery of this amount without leave to reapply. I also dismiss their claim for recovery of mailing costs associated with the service of documents as those amounts are not recoverable. Parties

are responsible for the costs of complying with the Act, including the service of documents.

Further to the above, I dismiss the landlord's claim for recovery of \$120.00 paid to the tenant in February of 2022. This amount was an agreed upon reimbursement to the tenant for carpet cleaning costs. It is not open to the landlord now, more than three years later, to change their mind about reimbursing the tenant for this amount.

### **Is the tenant entitled to compensation for monetary loss or other money owed?**

The tenant sought recovery of rent unlawfully collected by the landlord due to an illegal rent increase.

I have already found earlier in this decision that the rent was not lawfully increased by the landlord in July of 2024. Section 43(5) of the Act states that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. I have also already found that it was effective July 1, 2024. As a result, I find that the tenant is only entitled to recovery of the \$250.00 unlawfully collected in July of 2024. As the tenant did not pay this unlawful amount in August, and in fact paid only \$2,104.04 of the \$2,586.00 owed for August of 2024, they are not entitled to anything for August.

I also grant the tenant's claim for \$150.00 in compensation for loss of use and quiet enjoyment. Although the landlord may not have been responsible for balcony renovations, they nevertheless charged the tenant full rent during these renovations. A period of between 3-4+ weeks during which I am satisfied that the tenant not only lacked access to the balcony, a part of the rental unit rented to them under their tenancy agreement, but also suffered a significant loss of use of interior space.

I find that the above was more than just a temporary discomfort or inconvenience, as it lasted several weeks. I am also satisfied that it impacted multiple areas of the rental unit. As a result, I find that the tenant lost both use and quiet enjoyment of their rental unit during that time for which they are entitled to compensation under sections 28 and 7 of the Act. Although the landlord disagreed with the tenant's valuation, I find it reasonable given the space lost, the amount of rent being paid under the tenancy agreement, and the duration of the issue.

### **Is the tenant entitled to the return of all or part of their security deposit?**

The landlord acknowledged that the tenant did not receive credit for interest accrued on their security deposit when it was used to pay for rent in August 2024. The tenant paid the landlord \$879.04 via e-transfer and considered the remainder to have been paid via their original security deposit of \$1,225.00. In total the landlord considered them to have paid \$2,104.04 in rent for August 2024. They stated that although they did not agree in advance that the tenant could use the security deposit to pay rent, they had to use it in conjunction with the tenant's e-transfer to pay their mortgage. As a security deposit is

held in trust during a tenancy, and is not the property of the landlord unless agreed to by the parties or ordered by the Branch, I find that the only lawful way for the landlord to have used the deposit to pay their own mortgage, was for them to have agreed to the tenant's use of it to pay their rent. As they used it to pay their mortgage, and were not otherwise entitled to do so by law, I therefore find that they ultimately agreed under section 21 of the Act that it could be used by the tenant to pay a portion of August 2024 rent.

With regards to interest on their security deposit, I find that the tenant is entitled to \$43.69. The parties agreed at the hearings that the \$1,225.00 security deposit was paid on October 10, 2021. It was then used on August 2, 2024, to pay for a portion of August 2024 rent. According to the deposit interest calculator the interest owed on the deposit as of August 2, 2024, was \$43.69. I therefore grant the tenant recovery of that amount.

**Are the parties entitled to recover their filing fees from each other?**

Recovery of the filing fee is at my discretion. As the parties filed Cross-Applications, and each was only partially successful, I decline to grant either party the return of their filing fee under section 72(1) of the Act.

**Conclusion**

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$1,030.95** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
compensation for damage to the rental unit or common areas	\$992.68
unpaid August 2024 rent	\$481.96
compensation for monetary loss or other money owed	\$0.00
recovery of the filing fee for this Application	\$0.00
less the \$43.69 in interest owed to the tenant	-\$43.69
less the \$250.00 owed to the tenant for recovery of an unlawful rent increase	-\$250.00
less the \$150.00 in compensation for monetary loss or other money owed to the tenant	-\$150.00
less recovery of the tenant's filing fee	\$0.00
<b>Total Amount</b>	<b>\$1,030.95</b>

The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** by the landlord as soon as possible. Should the tenant fail to

comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than \$35,000.00.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the delay

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: September 23, 2025

Residential Tenancy Branch