

DECISION

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

The Landlord files its own application, seeking the following relief under the *Act*:

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

N.S. attended as the Tenant and had the assistance of her son, B.S.. T.M. attended as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I reminded the parties of Rule 6.11 of the Rules of Procedure, which prohibits them from recording the hearing themselves and that the hearing was automatically recorded by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties confirmed that they served one another with their respective application materials. Both sides acknowledge receipt of the other’s application materials without objection. Accepting this, I find under s. 71(2) of the *Act* that both sides have been sufficiently served with the other’s application materials.

Preliminary Issue – Parties’ Named in the Applications

The parties named in the applications differ from one another. The Tenant, in her application, names B.S. as a co-tenant, while naming the Landlord differently than the Landlord names itself in its application.

I have been given a copy of the tenancy agreement, which lists the Tenant as the sole tenant on the agreement, with B.S. being a minor and an occupant. The Landlord is named in the tenancy agreement as named in its application.

I clarified with the parties whether B.S. was a tenant given what is listed in the tenancy agreement. The Tenant confirmed that the obligation for paying rent fell upon her and that her son was living in the rental unit with her. Accepting this, I find that B.S. was improperly named in the Tenant's application. Should liability fall on the Tenant, having her son named as a party to the dispute would be problematic since he was not a party to agreement, which is to say he was not subject to the obligations set out in the tenancy agreement. Accordingly, I remove B.S. as a party to this dispute by amending the Tenant's application.

The Landlord's agent confirmed that its preferred naming is as listed in the Landlord's application, which itself conforms to the name listed in the tenancy agreement. Accepting this, I harmonize the Landlord's name by amending the Tenant's application to name the Landlord as it is named in its own application.

Issues to be Decided

- 1) Is the Tenant entitled to a monetary order resulting from the Landlord's breach of the *Act*, Regulations, or tenancy agreement?
- 2) Is the Landlord entitled to a monetary order compensating it for damage to the rental unit caused by the Tenant or her guests?
- 3) Is the Tenant or Landlord entitled to the Tenant's security deposit?
- 4) Is either party entitled to the return of their filing fee?

Evidence and Analysis

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on March 31, 2024.
- The Tenant vacated the rental unit on June 30, 2025.
- Rent of \$1,545.00 was due on the 1st day of each month.
- A security deposit of \$750.00 was paid by the Tenant.

As noted above, I have been given a copy of the written tenancy agreement.

Legal Test Applicable to the Monetary Claims

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline 16, summarizing the relevant principles from ss. 67 and 7 of the *Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.

2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) *Is the Tenant entitled to a monetary order resulting from the Landlord's breach of the Act, Regulations, or tenancy agreement?*

The Tenant, in her application, seeks \$2,295.00 in compensation, describing her claim as follows:

On June 24, [the Landlord's agent] informed me in writing that a 3–4 day renovation was required and that my son and I could not remain in the unit during that time. No alternative accommodation or compensation was offered, so we were forced to vacate urgently. Under stress, I found new housing and moved out, notifying [the Landlord's agent] in writing on June 27. Despite this, he withdrew July rent from my account and is withholding the \$750 deposit. His actions caused emotional distress and financial harm.

I have redacted the agent's name in the interest of his personal privacy.

Since the Landlord is claiming against the security deposit, I will consider the Tenant's claim for its return later in the decision.

Submissions

The Tenant argues she was effectively forced to vacate the rental unit early on June 30, 2025, and that, despite doing so, the Landlord withdrew rent on July 1, 2025. The Tenant says the Landlord's actions imposed some financial hardship on her since it resulted in her account being overdrawn. The Tenant's evidence contains an email dated July 3, 2025 from her bank showing she incurred a \$48.00 NSF fee due to her account being overdrawn.

The Tenant explained that there was a water leak in the bathroom of her rental unit that resulted in the removal of the flooring. I am told by her that the Landlord's agent asked her to vacate the rental unit while the repairs were completed and that he denied her request that she be compensated for obtaining alternate accommodations elsewhere. The Tenant said she could not cover the expense of living elsewhere temporarily, such that she decided to move, giving the Landlord notice to that effect on June 27, 2025.

The Landlord's agent indicates that a plumbing leak was discovered on June 10, 2025 that affected the Tenant's rental unit and the rental unit below hers. I am told by him that the rental unit had only 1 bathroom and that repairs to the water leak would render the bathroom unusable for 4 or 5 days. The Landlord's agent says that on June 16, 2025 he gave the Tenant an update regarding the scope of the repairs, and the need for the rental unit to be temporarily vacant.

The Landlord's agent also explained that in the initial remediation work, the flooring to the Tenant's bathroom was removed, which involved the removal of vinyl planks. It was discovered that there as flooring beneath the vinyl planks that may have contained asbestos. To remediate the issue, temporarily, a membrane was applied to the flooring pending final repair to the bathroom. The agent argued that the bathroom was usable by the Tenant until the final repair was scheduled. The Tenant says that the state of the bathroom was a factor in her decision to move as soon as possible.

The Tenant says that she asked the Landlord's agent if she could have a month to vacate the rental unit, to which I am told by her that he did not agree to that and that the repair work would be completed imminently. The Tenant's evidence contains an email sent to her by the Landlord's agent on June 24, 2025 where he indicated the repair work would take 3 to 4 days and that he was uncertain on when the work would begin but says he would notify her as soon as he knew.

The Landlord's agent denies this, emphasizing he was agreeable to the Tenant vacating provided she gave proper notice and that the final repair work was not set to begin given some delays with the owner's insurance. The Landlord's agent says that the Tenant asked for information regarding ending her tenancy, which resulted in him providing information to this effect on June 18, 2025.

I am also told that the Tenant filed another application with the Residential Tenancy Branch. The file number for that matter was confirmed by the Landlord's agent and is noted on the cover page of this decision. Review of it shows the Tenant had filed for an order that the Landlord comply with the *Act*, regulations, or tenancy agreement on June 20, 2025. It was subsequently withdrawn on July 11, 2025, which is when the Tenant's current application was filed.

The Landlord's evidence contains a notice to end tenancy from the Tenant dated June 23, 2025. In it, the Tenant says she is given her notice to vacate on June 30, 2025. The Landlord's agent says he found this on his desk on June 23, 2025, which prompted him to reply to the Tenant on June 23, 2025 explaining that the Tenant was required to provide more notice. I have been given a copy of the agent's email of June 23, 2025 where he explained the notice provisions of the *Act* to the Tenant.

The Tenant's evidence contains an email she sent to the Landlord's agent on June 27, 2025 where she restated, word for word, the notice dated June 23, 2025.

Findings

As a preliminary point, the Landlord has not advanced a claim seeking compensation for lost rental income. Since the Landlord withdrew funds from the Tenant's account on July 1, 2025, it put the Tenant in a position to file this application.

Given the circumstances, I find the Landlord ought to have reasonably concluded that rental income for July 2025 would be disputed by the Tenant, since it had taken back possession of the rental unit on June 30, 2025, as confirmed by the parties at the hearing. As will be discussed below, the Landlord should not have withdrawn funds from

the Tenant's account and should have, instead, filed an application with the Residential Tenancy Branch claiming lost rental income due to alleged improper notice.

Having said this, I find that Tenant's claim for compensation, and the Landlord's reasons for withdrawing rent payment on July 1, 2025, are inseparable from one another. Despite my view that this claim is one filed in reverse, in that the Landlord ought to be the applicant seeking lost rental income, I will consider the issues raised by the parties in their submissions and evidence in the interest of dealing with the matter fairly and efficiently.

Under the *Act*, a tenancy may only end in accordance with Part 4. Speaking generally, a tenant may end their tenancy under s. 45 of the *Act* by providing written notice to their landlord with sufficient notice of when they are vacating. In the case of a month-to-month tenancy, which is the case here, a tenant must under s. 45(1) of the *Act* provide at least a month's notice to their landlord with an effective date set for the day before rent is due in their tenancy agreement.

As noted by the Landlord's agent in the email he sent to the Tenant on June 23, 2025, s. 53(1) of the *Act* operates to automatically correct the effective date of a notice to end tenancy if it is incorrect to the earliest date that complies with the relevant provisions of the *Act*.

As an initial finding, I accept the rental unit could not be occupied during the repairs due to the loss of the sole bathroom in the rental unit while the repairs were to be completed. Also, I accept that asbestos containing materials may have been present, as confirmed by the Landlord's agent in his testimony, such that asbestos remediation may have also been necessary rendering occupation in the rental unit while the work was completed potentially hazardous to the Tenant and her son.

A tenancy may also end under s. 44(e) of the *Act* if it has been frustrated. Policy Guideline 34 provides guidance on what may constitute a frustrated tenancy, stating the following:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into.

A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

Though the Tenant did not argue the tenancy agreement was frustrated, I have considered this possibility given the circumstances surrounding the repairs required to repair the rental unit's bathroom. In brief, I find that s. 44(e) of the *Act* does not apply. I accept that the bathroom was usable prior to the Tenant vacating on June 30, 2025.

The Landlord had a professional remediation company involved with the repair work, which I accept removed the flooring in the bathroom and applied a temporary membrane to address any potential risk of disturbing the asbestos in the old flooring. Simply put, the flooring's removal, though less aesthetically pleasing, did not otherwise impede the Tenant's ability to make use of the rental unit as her living accommodation, nor was there risk to her or her son's health from asbestos exposure. Again, the bathroom was still usable.

Under s. 49.2 of the *Act*, a landlord may request an order of possession ending a tenancy for repairs and renovation, which requires proof from a landlord that the rental unit must be vacant. Policy Guideline 2B provides guidance on when a tenancy may end under s. 49.2 of the *Act*, indicating that vacancy must be for a prolonged period such that the only way to undertake the repairs is for the tenancy to come to an end.

I infer from s. 49.2 of the *Act* and the guidance from Policy Guideline 2B that temporary vacancy does not mean a tenancy is frustrated since there would be no need to make use of s. 49.2 of the *Act* if an essential facility, such as a bathroom, is temporarily suspended pending repairs. Furthermore, given the fact that the repairs required only brief vacancy, it would be unlikely the Landlord could have received an order of possession under s. 49.2 of the *Act*, thus leaving it with the course it took which is requesting the Tenant to temporarily move out while repairs were undertaken.

Since the tenancy was not frustrated, this means the Tenant could only end the tenancy by providing proper notice in accordance with s. 45(1) of the *Act*. I have no difficulty finding that her notice of June 23, 2025, which was replicated on June 27, 2025, provided insufficient notice to the Landlord. The Landlord's agent was correct when in his email of June 23, 2025 that the soonest the Tenant could set the effective date for her notice was on July 31, 2025.

The Tenant argued that the Landlord did not agree to pay for her accommodation elsewhere such that she had no choice but to move. I do not find this argument to be relevant to the question of whether the tenancy ended in accordance with the *Act*, though I accept it informed the Tenant's decision to move.

Addressing the argument briefly, clause 42 of the tenancy agreement required the Tenant to carry insurance for her personal belongings. Commonly, tenant's insurance would also include coverage for temporary accommodations, that would likely have applied to these circumstances. Further, there is no obligation in the *Act* that requires landlords to cover the expense of temporary accommodation for tenants displaced from

their rental unit, though tenants would be entitled to a rent reduction under s. 65(f) of the *Act* due to the loss of use of the rental unit while they were displaced.

In other words, the Landlord was not required to cover the expense of the temporary accommodation and the Tenant's failure to carry tenant's insurance, though being required to do so under the tenancy agreement, resulted in her having to cover this expense herself.

I find that the Tenant failed to provide proper notice to end tenancy under s. 45(1) of the *Act* and is thus liable to the Landlord for rental income in July 2025.

Having said this, I take a very dim view of the Landlord withdrawing funds from the Tenant's account on July 1, 2025, despite taking back possession of the rental unit on June 30, 2025. Given the correspondence on file, the Landlord ought to have known that rent for July 2025 would be disputed by the Tenant. The Landlord should have filed with the Residential Tenancy Branch seeking compensation for lost rental income, rather than exercising self-help by taking funds from the Tenant's bank account.

The Landlord's agent argued the effective date of the Tenant's notice of June 23, 2025 was changed, automatically, to July 31, 2025, such that this is when the tenancy ended. I agree that s. 53(1) of the *Act* would operate to correct the effective date of the Tenant's notice. However, this argument fails to consider the facts on the ground, which was that the Landlord had by June 30, 2025 already taken back possession of the rental unit.

I find that, effectively, the tenancy ended on June 30, 2025 when possession of the rental unit was surrendered by the Tenant to the Landlord. As a result of this, I find that the Landlord's withdrawal of funds from the Tenant's account after the tenancy had effectively ended constitutes a breach of an implied obligation under the authorization it obtained to withdraw funds from the Tenant's account, namely, to not withdraw funds unless permitted to do so during the tenancy. Since by the time the funds were taken from the Tenant the tenancy was over, the Landlord was not permitted to withdraw funds on its own for the disputed amount.

Conversely, I also find that the Landlord would otherwise have been entitled to lost rental income for July 2025 given the fact that it received notice from the Tenant on June 23, 2025 to move out on June 30, 2025. Given the limited notice, and the fact that repairs to the bathroom were necessary, it all but ensured the Landlord would suffer a loss of rental income for July 2025.

Considering the dueling breaches of the parties, I find that the Landlord taking funds from the Tenant for rent in July 2025, though improper, nets out the compensation it would have all but certainly received had it filed its own application. I accept the Tenant suffered a loss, however, of \$43.00 charged to her by her bank due to the overdraft withdrawal. Accordingly, I grant the Tenant \$43.00 in compensation to make good on this loss.

2) Is the Landlord entitled to a monetary order compensating it for damage to the rental unit caused by the Tenant or her guests?

The Landlord, in its application, claims \$2,337.93 in compensation, describing its claim as follows:

emergency service, portable washing machine leak from [the rental unit] affect both [the rental unit and adjacent rental unit].

I have redacted the address for the rental unit and the adjacent rental unit since it is information that may personally identify the parties or the occupant of the adjacent rental unit.

Submissions

The Landlord's agent advised that the Tenant notified him on April 2, 2024 that there was a leak in the rental unit. I am told by him that this was caused by the Tenant's use of a portable washing machine that drained into the kitchen sink. He says that the Tenant made use of a strainer at the bottom of the sink, which he says he was told was blocked and resulted in the overflow.

The agent says that the water leaked into the rental unit below the Tenant's and that remediation was required. The Landlord's evidence contains a site report from the remediation contractor showing elevated moisture in the affected areas. The agent says that fans and dehumidifiers were set up to address this, which cost \$2,337.93, and that the Landlord seeks this payment from the Tenant. I have been provided with an invoice dated April 29, 2024 from the remediation contractor in the amount claimed by the Landlord.

The Tenant admits that she made use of a portable washing machine in the rental unit, and that the sink strainer was plugged that contributed to the flood. However, I am told by her that she had issues with drainage of the plumbing at the rental unit bathroom and kitchen, which she argued also contributed the flood.

The Tenant and her son both say that the bathroom sink backed up on March 31, 2024, which they say was reported to the Landlord. The Tenant's evidence contains a copy of a text message sent by her to the Landlord's agent on March 31, 2024 with a picture of the bathroom sink filled with water.

The Landlord's agent acknowledges that the plumbing for the bathroom and kitchen are proximate to one another, though argued that there was nothing wrong with the kitchen sink other than the screen the Tenant admits was blocked. He says that Tenant reported to him that the water drained once the screen was removed, such that this means the issue was caused by the Tenant, not a maintenance issue with the plumbing.

The Tenant says she spoke with the plumber that attended the rental unit on that occasion, and that she was told that there was also an issue with the kitchen plumbing as well. The Landlord's agent denies an issue with the kitchen sink. I am told by the

Landlord's agent that the report from the plumber brought in to repair the plumbing only noted issues with the bathroom drain and that there is no indication it also affected the kitchen sink as well.

The Tenant also argued that the flooring in the rental unit was in poor condition, saying that there were gaps in the flooring and that it was held by tape. The Tenant argued that the flood was made worse due to the poor condition of the flooring.

Findings

Sections 32(2) and 32(3) of the *Act* impose an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

In brief, I find that the Tenant breached her obligation under s. 32(3) of the *Act* by causing damage to the rental unit and failing to undertake repairs to address the damage caused by her or her son.

It is confirmed by both parties that the Tenant made use of a screen in the kitchen sink. The Tenant admits that this was blocked and contributed to the flood, though she argued the flooring and plumbing blockage contributed to the damage that resulted.

Dealing first with the flooring, I find that there is little merit in this argument. Irrespective of the condition of the flooring, there ought not have been a water overflow onto the floor to the extent that it leaked into the rental unit below the Tenant's. This is confirmed by the site report in evidence, as well as confirmed by the Tenant where she says her neighbour came up to speak with her about the leak into their rental unit. Simply put, this was a significant water leak and even had the flooring not had gaps it would have caused water damage since no standard flooring is designed to operate as a waterproof membrane to protect against leaks of this nature.

I accept that the kitchen and bathroom sink share common plumbing. I also accept that the bathroom sink was plugged as of March 31, 2024, as demonstrated by the text message in evidence. However, I have no evidence to support that the kitchen sink was similarly plugged at the same time. To the contrary, the Tenant, as indicated in written submissions she prepared for her previous application, a copy of which has been provided by the Landlord, says the water overflowed due restricted drainage caused by the mesh strainer in the sink and the issue was resolved when the strainer was removed. I agree with the Landlord agent that the if there was a blockage lower down into the plumbing that affected the kitchen and bathroom, the water would not have drained as readily as reported by the Tenant upon removal of the strainer.

I find that the Tenant breached s. 32(3) of the *Act*, which resulted in a loss to the Landlord of \$2,337.93 to remediate the water damage. I accept it was necessary to remediate the water leak to prevent the possibility of mould growth, which would have only caused more property damage and disruption to the occupants at the residential

property. I find that there is little evidence to support this cost could have been avoided since it was taken to mitigate the risk of further property damage.

Accordingly, I grant the Landlord \$2,337.93 in compensation due to costs tied with remediating the water leak caused by the Tenant's use of a portable washing machine and strainer.

3) *Is the Tenant or Landlord entitled to the Tenant's security deposit?*

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the tenant's forwarding address in writing, whichever is later, either repay a tenant their deposits or make a claim against the deposits with the Residential Tenancy Branch.

I asked the Tenant when she provided her forwarding address to the Landlord. I did not receive a clear response, though the Landlord's agent says that he received the forwarding address in the Notice of Dispute Resolution filed in this matter.

There was some discussion that the forwarding address was listed in the previous matter filed by the Tenant. However, the Landlord's agent advises that the package sent to the Tenant in response to the previous application was returned to the Landlord. Review of the previous matter shows the Landlord applied for an order for substitutional service on the basis that the Tenant had not provided a forwarding address, at that time.

To be clear, I accept that the Tenant's current address is listed as her address for service in the Notice of Dispute Resolution in her current application. I do not, however, accept that this provides clear notice to the Landlord that it was also the Tenant's forwarding address.

Section 38(1) of the *Act* provides a landlord a relatively short period to decide to either claim against their tenant's deposits or to return them. Given this, I find that tenants must provide clear notice, in writing, that the address they are providing is their forwarding address.

Since the Tenant did not provide clear notice of her forwarding address, and since I do not accept that the address for service in the Notice of Dispute Resolution is sufficient to put the Landlord on notice that it received the forwarding address, I find that the 15-day deadline under s. 38(1) of the *Act* has not been triggered.

Accordingly, I order under s. 72(2) of the *Act* that the Landlord retain the security deposit and interest owed to the Tenant's on the security deposit, imposed by s. 38(1)(c) of the *Act*, in partial satisfaction of what it is owed by the Tenant.

Interest in this case is \$20.39. I have calculated this by use of the Residential Tenancy Branch's deposit interest calculator for the entire period it was held in trust by the Landlord, being from its receipt on April 1, 2025 as noted in the tenancy agreement to the date of this decision.

In total, \$770.39 will be offset from the final monetary order.

4) *Is either party entitled to the return of their filing fee?*

I find that the Tenant was largely unsuccessful and is not entitled to her filing fee. Accordingly, I dismiss her claim under s. 72(1) of the *Act* for its return, without leave to reapply.

I find that the Landlord was largely successful and is entitled to its filing fee. Accordingly, I order under s. 72(1) of the *Act* that the Tenant pay \$100.00 to the Landlord for its filing fee.

Conclusion

I grant the Tenant \$43.00 in compensation on her application.

I grant the Landlord \$2,337.93 in compensation on its monetary claim, as well as \$100.00 for its filing fee.

I direct that the Landlord retain the security deposit and interest on the security deposit, totalling \$770.39, in partial satisfaction of what it is owed by the Tenant.

In total, I order that the Tenant pay **\$1,624.54** to the Landlord ($\$2,337.93 + \$100.00 - \$43.00 - \770.39).

The Landlord must serve the monetary order on the Tenant and may enforce it at the BC Provincial 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: September 18, 2025

Residential Tenancy Branch