DECISION

Introduction

This hearing was reconvened from previous hearings regarding the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- compensation of $2,223.00 for damage or loss under the Act, regulations, or tenancy agreement under section 67 of the Act; and
- authorization to recover the filing fee for the Tenant's application from the Landlord under section 72(1) of the Act.

The Landlord applied for:

- compensation of $5,800.00 for damage or loss under the Act, regulations, or tenancy agreement under section 67 of the Act; and
- authorization to recover the filing fee for this application from the Landlord under section 72(1) of the Act.

Interim decisions were issued on June 20, 2025 and July 30, 2025. This decision should be read together with the interim decisions.

The Tenant, the Tenant's spouse AY, and the Landlord's agent SM attended this reconvened hearing. All attendees gave affirmed testimony.

Service of Evidence

The Tenant provided proof that his evidence was emailed to SM on July 30, 2025. I find the Landlord was sufficiently served with the Tenant's evidence.

The Landlord did not submit additional evidence.

Issues to be Decided

Is the Tenant entitled to compensation for damage or loss under the Act, the regulations, or the tenancy agreement?

Is the Landlord entitled to compensation for damage or loss under the Act, the regulations, or the tenancy agreement?

Are the parties entitled to recover their filing fees?

Background and Evidence

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

The rental unit was the upper suite of a house. The parties entered into a fixed term tenancy agreement commencing on March 31, 2025 and ending on June 30, 2025. The rent was $2,900.00 due on the first day of each month. The Tenant paid a security deposit of $1,450.00.

The Tenant and AY moved into the rental unit on April 1, 2025.

On April 2, 2025, the Tenant messaged the Landlord's then property manager KH that they had vacated the rental unit. On April 4, 2025, the Tenant emailed KH a notice to end the tenancy due to misrepresentation.

The Tenant requested the return of the security deposit and a refund of the rent paid. The Landlord returned the Tenant's security deposit.

In the Tenant's application, the Tenant seeks compensation of $2,223.00, or 75% of the rent paid for April 2025.

In the Landlord's, the Landlord seeks compensation $5,800.00 for two months' rent lost during the remainder of the fixed term.

The Tenant's Position

The Tenant entered into a fixed term for 3 months as he and AY were waiting for their presale unit to be completed.

Prior to signing the tenancy agreement on March 28, 2025, the Tenant was not informed that the property had recently been broken into, or that someone had unlawfully entered and resided in the garage. The Tenant had asked KH if the house had ever been broken into, and was told it had not. If the Tenant had been aware of the history of unauthorized occupants and associated safety concerns, the Tenant would not have agreed to rent the unit.

The laundry room was sealed shut with nails and inaccessible during the viewings. The Landlord either did not want the mould to be discovered during the showing, or they did not want trespassers to break in. After moving in, the Tenant discovered mould in the

laundry room, raising significant health concerns. The Tenant is very allergic to mould. If the mould had been disclosed, the Tenant would not have entered into an agreement.

The garage door did not operate electronically and had to be opened manually, which was a safety hazard due to its weight and function. It was not securely locked, but was locked using an L bracket on the inside. This compromised the security of the unit.

On the evening of April 1, 2025, trespassers were heard on the property. The next morning, the Tenant found garbage that had been left behind. The Tenant did not involve the police on April 1, 2025 as the Tenant initially thought the Landlord had rented the basement suite to another tenant. The Tenant learned this was not the case on April 2, 2025.

The Landlord came in briefly on April 2, 2025, and admitted that the garage was broken into just right before the Tenant moved in, which was why there was junk inside the garage. A neighbour later confirmed that this garbage had originally been stored in the garage after the break-in, and was later removed and dumped outside by the Landlord on March 31, 2025.

These events demonstrate a failure by the Landlord to disclose critical information regarding the property's condition, history of unauthorized access, and existing health and safety hazards. This constitutes a serious misrepresentation and breach of the Landlord's obligations under the Act.

The Tenant's biggest concern was safety. There were no cameras or alarms, and the locks to the rental unit had not been changed. The Tenant had to make the executive decision to vacate on the morning of April 2, 2025. No matter what the Landlord said about making some adaptations, the Tenant and AY would have still felt unsafe.

After the Tenant gave notice to end the tenancy, KH failed to respond to the Tenant's calls and text messages regarding important tenancy concerns. The Landlord did not make a reasonable effort to mitigate loss by attempting to re-rent the unit. There is no indication that the unit was advertised or shown to prospective tenants in a timely manner. The shower diverter was broken, resulting in very little water coming out of the showerhead. The lawn was not taken care of. Even if the Tenant had wanted to sublet the unit, the Tenant could not do so because the house was not attractive to potential tenants with its poor maintenance. KH said the Landlord was open to doing a 3-month lease starting from April 15, 2025, but did not start to advertise until mid-April.

The Tenant wanted to rescind the agreement due to negligent misrepresentation from the Landlord and KH. The Tenant offered to compensate the Landlord prorated rent of 1 day, which the Tenant later increased to 1 week.

The Landlord's Position

Both the upper and lower suites of the property were lawfully occupied until just before the unit was advertised. The Tenant could have called the police and let the Landlord know to secure the garage.

The laundry room was in a separate space not connected to the upper suite rented by the Tenant.

The Act is clear about a tenant's responsibility to give proper notice to end the tenancy. The Tenant could have requested repairs, deducted emergency repairs from the rent, or applied for dispute resolution. However, the Tenant moved out after a couple of days.

The Landlord had rented the unit to the Tenant on a 3-month fixed term because the property was being torn down. The Landlord had the demolition permit and was waiting on the contractor to do the work. The date scheduled was just after this tenancy would have ended. The Landlord lost 2 months of rent. The Landlord had no way to mitigate in that short period, as it would be considered a short-term rental. KH put up an ad for only a short period of time. The unit was not re-rented and the property has been demolished.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the Tenant entitled to compensation for damage or loss under the Act, the regulations, or the tenancy agreement?

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.

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.

To determine whether compensation is due, the arbitrator may assess whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

For the reasons given below, I do not find the Tenant to have established that he suffered a loss of $2,223.00 (for the April rent paid, less 7 days), due to a breach of the Act, the regulations, or the tenancy agreement by the Landlord.

Misrepresentation

In this case, I am not satisfied that the parties' tenancy agreement should be rescinded due to misrepresentation.

As stated in *O'Shaughnessy v. Sidhu*, 2016 BCPC 308, misrepresentation is a false statement of fact, made in the course of negotiations or in an advertisement, that has the effect of inducing a reasonable person to enter into the contract. The principal remedy is rescission, whereby the contract is set aside and the parties are restored to their original positions.

The Tenant says there was misrepresentation when KH responded "no", upon being asked if the house had ever been broken into.

Based on the evidence presented, I do not find KH's statement to amount to fraudulent misrepresentation inducing a contract. A fraudulent misrepresentation is a representation of fact made without any belief in its truth, with the intent that the person to whom it is made will act on it, and actually causing that person to act on it. As stated by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 at para. 29: "Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element." I find the Tenant acknowledged in his email dated April 4, 2025 that he understood KH was not aware of any break-ins. I find there is insufficient proof of a mental element of fraud.

Additionally, I do not find KH's statement to amount to negligent misrepresentation. The elements of the tort of negligent misrepresentation are stated in *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 110, as follows:

> (1) there must be a duty of care based on a "special relationship" between the representor and the representee;
> (2) the representation in question must be untrue, inaccurate, or misleading;
> (3) the representor must have acted negligently in making the misrepresentation;
> (4) the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and
> (5) the reliance must have been detrimental to the representee in the sense that damages resulted.

Accepting that KH owes the Tenant a duty of care as the property manager and that KH's statement about the property's break-in history was untrue, I find there is insufficient evidence to prove that KH had acted negligently in making the misrepresentation. I also do not find the Tenant's reliance on the representation to have been detrimental in the sense that damages resulted. I find the Tenant did not suffer any actual loss due to the garage having been previously occupied by an unauthorized person. I accept the Tenant was upset due to the presence of an unauthorized person on the property the night that he and AY moved into the unit. However, I find this to be a separate incident. Furthermore, I find the person did not gain entry into the rental unit or garage, and did not cause any damage to the Tenant's belongings.

Lastly, I do not find the tenancy agreement should be rescinded due to innocent misrepresentation. Innocent misrepresentation requires that the statement is of fact, is untrue, is material, and was relied on by the recipient as a reason to enter into the contract. What constitutes a material representation depends on the context of the contractual situation. The terms "substantial" and "going to the root of the contract" are synonymous with "material": *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423. The victim alleging innocent misrepresentation must show a substantial difference between what the victim bargained for and what was obtained, such as to constitute a failure of consideration: *Alberta North West Lumber Co. v. Lewis*, [1917] 3 W.W.R. 1007 (B.C.C.A.).

Here, I do not find KH's statement to have been material or going to the root of the tenancy agreement. I find there was no mention in the parties' tenancy agreement of this issue, to signify its importance. I do not find the Tenant to have received something that was substantially different from what was bargained for. I do not find KH's statement would have been a warranty that there would be no trespassers on the property in the future. Moreover, I find the issue could have been reasonably resolved by contacting the police, requesting the Landlord to add more locks, and using an alarm system and/or security cameras. I find the Tenant could have requested the Landlord to re-key the entry to the rental unit in accordance with section 25(1) of the Act.

I find that aside from the above, the Tenant mostly argues that there was misrepresentation due to non-disclosure. However, non-disclosure is not a false statement of fact. I do not find it is alleged that the Landlord had made any verbal representations to induce the Tenant. I also do not find it is alleged that KH had made any verbal representations about the laundry room or garage door to induce the Tenant to enter into the tenancy agreement.

For these reasons, I do not find that the parties' tenancy agreement should be set aside due to misrepresentation.

Ending the Tenancy Agreement

Having found that the parties' tenancy agreement was not void, I find the parties are bound by its terms.

I find the Tenant vacated the rental unit on April 2, 2025, prior to the expiry of the fixed term on June 30, 2025.

Under section 45(2) of the Act, a tenant may end a fixed term 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
- <u>is not earlier than the date specified in the tenancy agreement as the end of the tenancy</u>, 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.

(emphasis underlined)

In other words, a tenant may not give notice to end a fixed-term tenancy effective prior to the fixed-term end date, unless otherwise permitted under the Act.

In this case, I find the Landlord did not mutually agree with the Tenant in writing to either end the tenancy after 2 or 7 days, and refund the prorated rent. I find the Tenant did not quality to end the tenancy early for fleeing family violence or moving into long-term care (section 45.1 of the Act). I also note it was not argued that the tenancy agreement was frustrated, nor do I find frustration to have been made out on the facts of the case.

I accept the Tenant ended the tenancy due problems with the rental unit and what the Tenant argued were breaches by the Landlord. However, I do not find the Tenant to have complied with the requirements under section 45(3) of the Act before ending the tenancy.

Under section 45(3) of the Act, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As explained in Residential Tenancy Policy Guideline 8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Before serving a notice to end tenancy for breach of a material term, the party alleging the breach must first let the other party know in writing of the alleged breach and give them a reasonable opportunity to fix the problem. The written notice of the alleged breach should inform the other party that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;

- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

If the other party does not fix the problem by the deadline, the party alleging the breach can serve a notice to end tenancy for cause for breach of a material term of the tenancy agreement.

I find the Tenant did not give the Landlord a reasonable period after written notice, to correct the problems that the Tenant identified. I find the Tenant gave the Landlord less than 1 day to respond before vacating. I find the Landlord was not given any opportunity to address the Tenant's concerns.

Under these circumstances, I find the Tenant's loss of the balance of the April rent resulted from the Tenant's failure to comply with the requirements under section 45(3) of the Act, and not any breach of the Act, the regulations, or the tenancy agreement by the Landlord.

I find the Tenant could have mitigated the loss of the rent paid by continuing to reside in the rental unit. If the Landlord did not resolve the issues complained of in a timely manner, the Tenant could have applied for dispute resolution and could have sought a retroactive rent reduction due to any breach by the Landlord, including a breach of the Landlord's obligation to maintain and repair the property under section 32(1) of the Act.

Is the Landlord entitled to compensation for damage or loss under the Act, the regulations, or the tenancy agreement?

As stated in Residential Tenancy Policy Guideline 3, where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. This can include the rent that the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (see section 7(2) of the Act). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances.

I find the Landlord has not provided evidence of any listings posted for re-renting the unit after the Tenant vacated. I find there is insufficient evidence that the Landlord had

done whatever was reasonable to minimize the loss of 2 months' rent. I find the Landlord is not entitled to compensation from the Tenant for this loss.

Are the parties entitled to recover their filing fees?

Since neither of the parties have been successful with their application, I find the parties are not entitled to recover their filing fees from each other under section 72(1) of the Act.

Conclusion

Both applications made by the parties are dismissed in their entirety without leave to re-apply.

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: October 4, 2025

Residential Tenancy Branch