DECISION

Introduction

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

- an order of possession in line with a tenancy agreement vacate clause
- compensation for monetary loss/other money owed
- retain all/part of security deposit for compensation
- recovery of the Application filing fee.

The Tenant also filed an Application for:

- the Landlord's compliance with the *Act*/tenancy agreement
- recovery of the Application filing fee.

The Landlord and the Tenant both attended the scheduled hearing sessions.

Preliminary Matter – end of tenancy

The matter of the tenancy ending was resolved, with the Tenant moving out from the rental unit on July 31, 2025. I find this relieves the Landlord of the need for an order of possession, as listed on their Application on July 1, 2025. I withdraw this issue from the Landlord's Application, by authority of the Act s. 64(3)(c).

Service of the Notice of Dispute Resolution Proceeding and evidence

By Interim Decision dated July 31, 2025, I ordered parties to serve complete evidence to each other. In the reconvened hearing on September 4, 2025, neither party raised an issue of non-

service of evidence; therefore, I confirm each party served all of their document evidence to the other for this hearing.

Issues to be Decided

a. Is the Landlord obligated to comply with the *Act*/tenancy agreement?

b. Is the Landlord entitled to compensation for monetary loss/other money owed?

c. Is the Landlord authorized to retain all/part of the Tenant's security deposit?

d. Is the Landlord eligible for recovery of the Application filing fee?

e. Is the Tenant eligible for recovery of the Application filing fee?

Background and Evidence

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

a. Is the Landlord obligated to comply with the Act/tenancy agreement?

On their Application of July 1, 2025, the Tenant provided the following:

> Tenant requests: [. . .] A ruling that the tenancy rolls to month-to-month under s. 50 Residential Tenancy Act because clause 2E's vacate clause is invalid. [Landlord business entity name] is a corporate landlord, so s. 13.1 RTR doesn't apply.

The Landlord and the Tenant provided copies of each of the tenancy agreements they had in place during this tenancy:

- On February 13, 2024, the parties signed an agreement for the tenancy starting on April 1, 2024. This fixed-term tenancy agreement was set to end on March 31, 2025.

  The listed reason for the Tenant needing to vacate at the end of that term was "13.1", which refers to the individual section in the Residential Tenancy Regulation. The Tenant and Landlord initialed in the specified area to indicate acknowledgement of this requirement.

The rent amount was $23,000 per month, payable on the 1st of each month. The Tenant paid a security deposit of $11,500 on February 15, 2024.

- A secondary agreement/extension – which amends the fixed-term tenancy-end date to June 30, 2025 – bears the original party's signatures of February 13, 2024.

  The tenant-vacate reason, previously indicated as "13.1", is changed to "Sublease", with "Sublease" also listed as the Regulation section number that applies. This copy bears the parties' initials to indicate the amended tenancy-end date, and the reason for the tenancy-end date being "Sublease."

  In the hearing, the Landlord described this was the subject of "long conversations" with the Tenant., based on the Tenant challenging the previous agreement notation of "13.1". The Tenant wanted to extend on a monthly basis; however, the Landlord at the end of this fixed term had another tenant ready to move in, and it was the Tenant in reality that wanted this tenancy agreement to refer to "sublease".

  In response to this, the Tenant provided that the Landlord added the "illegal sublease clause", and denied that the tenancy would continue on a month-by-month basis. In the Tenant's evidence (text messages of February 20), the Tenant maintained the agreement should continue on a month-by-month basis.

  The rent amount was amended to $22,000 per month, "for the extension period from April 1, 2025 to June 30, 2025."

To illustrate the Landlord's position that this is a true subtenancy situation (in which they also describe themself in this correspondence as the "Sublandlord"), the Landlord in their evidence provided a copy of the tenancy agreement in which they are listed as the Tenant. This agreement was signed on March 11, 2024 by the owner, and on March 13, 2025 by the Landlord.

This original tenancy agreement sets the fixed-term tenancy-start date at April 1, 2024, and the tenancy-end date at March 31, 2025. The indication in this agreement, on page 2 of 6, is that the tenancy will continue on a month-to-month basis. The Landlord also provided a subsequent agreement they had with the owner from April 1, 2025 to March 31, 2026.

This document, on page 4 of 6, provides the following (copying what is set forth in the *Act*):

> The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length and has 6 months or more remaining in the term, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all

the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

Regarding this original tenancy agreement (*i.e.*, between the owner and the Landlord), the Tenant submits this document does not prove the Landlord's position that a subtenancy with the Tenant was in place. In their written summary, they stated that "No head lease, owner consent, or disclosure was provided."

Other reasons for the Tenant's submission:

- "Adding "sub-lease" without a head-lease is an attempted loophole to secure a higher-rent turnover." -- prior to the second agreement, the word 'sublease' was never mentioned by the Landlord before

- the *Regulation* s. 13.1 and Policy Guideline 30 require "real proof"; however, the Landlord did not provide proof

- a sublease tenancy agreement must in essence be shorter than an original tenancy agreement, making this sublease invalid

- the tenancy agreement between the Tenant and Landlord was signed prior to the Landlord having authorization to sublet from the owner/Landlord, with no proof thereof

- Policy Guideline 19 allows a fixed-term sub-lease to require a sub-tenant to vacate only if: a landlord under a sublease is itself a head-tenant; and the head-tenant will resume occupancy at the end of the fixed term, with that date disclosed in writing to the sub-tenant. As stated by the Tenant in the hearing, the Landlord here provided no evidence that they had the intention to return to the rental unit.

- Further, the Landlord of record is a business entity, meaning *Regulation* s. 13.1 cannot apply, not being applicable to the Landlord or a family member who would be moving into the rental unit.

- in this situation, the Landlord described themself as "the owner's landlord" and "not as a head-tenant who would move back in."

In the hearing, the Tenant described not being aware that this tenancy was a sub-lease situation. Upon discussing ending the agreement – meaning extending the agreement for extra months – the Landlord changed the reason for the tenancy ending as 'sublease.' The Tenant also described a sublease only being valid if shorter than the original tenancy agreement (*i.e.*, that between the owner and Landlord), with the opposite in place in this present scenario.

The Tenant also presented that they signed this extension agreement under duress

For these reasons, the Tenant submits the 'must vacate' notation, inserted into the tenancy agreement when amended on February 13, 2025 "is of no force or effect." This means, as per s. 50 of the *Act*, that the tenancy reverted to a month-to-month agreement at the end of the original fixed term.

b. Is the Landlord entitled to compensation for monetary loss/other money owed?

The Landlord, on their July 1 Application to the Residential Tenancy Branch, listed the following:

> $31,350: Loss of rent for July 2025 due to holdover by outgoing tenant. Incoming tenants were scheduled to move in July 1, 2025. The previous tenant refused to vacate despite lease ending July 30 and written notice, resulting in a full month of lost income.

Regarding the monetary claim, in the hearing the Landlord clarified that the Tenant paid $22,000 for July 2025 rent. The Landlord acknowledged this on a "use and occupancy only" basis, given that, in the Landlord's submission, the Tenant was overholding.

On July 1, 2025, the Tenant, via email to the Landlord's counsel, notified of their end-of-tenancy date for July 31, 2025. In this correspondence, they maintained that the tenancy was not a sub-lease.

The Landlord had a new tenant, with an agreement in place, for the start of the tenancy in the rental unit on July 1, 2025. They signed this agreement with the new tenant on June 27, 2025. This rent amount was $31,500, in what the Landlord presented as another subtenancy agreement, referencing s. 13.1 of the *Regulation*.

To the Landlord, they incurred a loss of rent income, being the difference in the rent amount paid by the Tenant (*i.e.*, $22,000) and the amount of the new tenant's rent, as per that new tenancy agreement (*i.e.*, $31,500).

Because the Tenant remained in the rental unit, the Landlord with their new tenant signed a Mutual Agreement to End Tenancy on July 6, 2025. This included an agreement that the Landlord would contribute $25,500 to that new tenant's first amount of rent at a replacement property. The Landlord provided an image of this cheque, made direct to the new tenant's new landlord, for that amount, dated July 6, 2025. This was owing to the Landlord not being able to have vacant possession of the rental unit in place, as agreed to, for the new tenant.

Beyond this, the Landlord provided that they did not have another new tenant lined up for the rental unit for August 1, after the Tenant vacated. The Landlord in their evidence provided a sample advertisement to show their efforts at re-renting.

The Landlord thus claims, as a loss to them, this extra amount of $25,500. In the Landlord's submission, their outlay to the new tenant's new landlord was owing to this breach by the Tenant, in overholding the agreement based on a subtenancy.

In the record:

- the Landlord's communication to the Tenant, via instant messaging on June 22, stating they just learned of the Tenant's intention to stay beyond the set tenancy-end date
- the Tenant via email on June 21 advised the Landlord of their intention to stay until "likely the end of July or August"
- on June 25, the Tenant re-stated to the Landlord, via email:

> I intend to stay tentatively only 1 – 2 months beyond 30th June and will give the required 30 days' written notice as soon as my move-out date is firm.

The Tenant submits that the Landlord is the author of their own misfortune in this instance. The Tenant in the hearing stated that they informed the Landlord on June 21 (as shown in their evidence email to the Landlord agent of that date) that they were not moving out on June 30, yet the Landlord signed the agreement with the new tenant on June 27.

Additionally, the Tenant paid the July 2025 rent in full ($22,000) meaning there was no loss to the Landlord here. The Landlord payment to the new tenant – ostensibly to avoid litigation – cannot be passed back to the Tenant here.

In the hearing, the Landlord outlined the difficult position they faced with their new tenant having to acquire other accommodation. The Landlord outlined their efforts at securing this for that new tenant, resorting to the $25,500 payment as an emergency measure, and as a means of equitably resolving their contractual obligation to that new tenant.

c. Is the Landlord authorized to retain all/part of the Tenant's security deposit?

As set out in the tenancy agreement, the Tenant paid a security deposit of $11,500 on February 15, 2024.

On their Application of July 1, 2025, the Landlord claimed against the security deposit for compensation. As of the final date the Tenant occupied the rental unit, July 31, 2025, the deposit accumulated $337.02[1] interest.

d. Is the Landlord eligible for recovery of the Application filing fee?

The Landlord paid the Application filing fee amount of $100 on July 1, 2025.

e. Is the Tenant eligible for recovery of the Application filing fee?

The Tenant paid the Application filing fee amount of $100 on July 1, 2025.

Analysis

a. Is the Landlord obligated to comply with the Act/tenancy agreement?

The *Act* s. 1 defines "fixed term tenancy" as a tenancy, under a tenancy agreement, that specifies the date on which the tenancy ends.

The *Act* s. 1 defines "sublease agreement" as a tenancy agreement

a. under which

   i. the tenant of a rental unit transfer the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenancy agreement, and

   ii. the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and

b. that specifies the date on which the tenancy under the sublease agreement ends

By applying this definition to the agreement in place, I find:

- the initial agreement in place between the Tenant and the Landlord was not for a period shorter than the term of the tenancy agreement that the Landlord had in place with the owner/Landlord: both have the tenancy end date of March 31, 2025
- moreover, the Landlord signed their agreement with the owner/Landlord on March 13, 2024, *one month after* they had an agreement in place with the Tenant, signed on

[1] 2024 $11500.00: $272.32 interest owing (2.7% rate for 87.70% of year)
2025 $11500.00: $64.70 interest owing (0.95% rate for 58.08% of year)

February 13 – I find this is logistically impossible, minus some discrepancy in dates that was not presented to me in this hearing

- the tenancy agreement between the Landlord and the owner/Landlord specifies, in clause 9, that the tenant (in this case, the Landlord) must not assign or sublet the rental unit without the written consent of the owner/Landlord – The Landlord did not present evidence of this; therefore, I find it more likely than not that there was no such written consent in place, and this is further proof that the Tenant and Landlord agreement was not a sublease agreement

I make these points regarding the initial agreement in order to show that there was no notion of a sublease present, or made known to the Tenant, since the start of the tenancy. The Landlord did not present communication as such to the Tenant, despite the existence of their original agreement with the owner/Landlord. In sum, I conclude that the tenancy was not spoken of, or referred to, as a sublease in its first iteration, thereby decreasing the likelihood of an existing sublease situation, as such, in the extension.

I find the subsequent extension – between the Tenant and the Landlord – until June 30, 2025 was not a sublease agreement. This agreement was in place prior to the Landlord and owner/Landlord agreement in place from April 1, 2025 through to March 31, 2026. The tenancy agreement, already in place, was fundamentally *not* a sublease agreement, or presented to the Tenant as such, in its first iteration. I conclude the foundation of the agreement in substance could not change upon the parties agreeing to extend the agreement through to June 30, 2025.

As stated, with the first iteration of the agreement not existing as a sublease, for the reasons listed above, I find its extension cannot be considered a sublease. The Tenant asked for an extension and agreed to that extension, not a sublease. As presented by the Tenant in this hearing, the Landlord did not present a copy of the original lease, neither at the time of the signing of the tenancy agreement originally, nor upon extending that agreement. Similarly, there was no proof of the owner/Landlord consent to sublease.

On these points, I accept the Tenant's submission that they signed the terms of the extension – particularly that labelling "sublease" as the reason they must move out – under some form of duress. I note all of the communication surrounding this transpired within days of the end-date of the first iteration of the agreement. I find it highly unlikely, as per the Landlord submission, that the Tenant asked for a sublease agreement.

As per the Tenant's submission in this hearing, I declare the clause setting out "sublease" as the reason for Tenant vacating the rental unit on June 30, 2025 is void. I find the Tenant credible that no notion of a sublease during the entire tenancy was presented to them.

Extending this further, I find there is no valid vacate clause in place in the tenancy agreement. I order that piece of the agreement null and void. In communication to the Landlord, the Tenant identified s. 50 of the *Act* as applicable in this situation; however, that reference is incorrect because that section refers to a tenant's ability to end a tenancy earlier in connection with a landlord serving an end-of-tenancy notice for a specific purpose. The correct reference to the *Act* is s. 44(3), which I find applies in this situation.

b. Is the Landlord entitled to compensation for monetary loss/other money owed?

In general, a party that makes an application for compensation against the other party has the burden to prove their claim. This burden of proof is based on a balance of probabilities. An award for compensation is provided for in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation, an applicant has the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that a damage/loss results from a violation of the *Act* and/or tenancy agreement;
- the value of the damage or loss; and
- steps taken, if any, to mitigate the damage/loss.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for monetary loss/other money owed, albeit to a limited extent.

The *Act* s. 45 governs how a tenant may end a periodic tenancy:

> 1) A tenant may end a periodic 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, and
>
> b) 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 simple terms, a tenant must provide at least one full month's written notice.

The agreement between the parties, being of standard format and reflecting the *Act* throughout, establishes in clause 14 that "The tenant may end a monthly . . . tenancy by giving the landlord at least one month's written notice."

As shown in the record of communication between the parties, the Tenant, via email to the Landlord on July 1, notified them about the tenancy ending on July 31, 2025.

I find the Tenant breached the tenancy agreement (clause 14) as well as s. 45(1) of the *Act* by notifying the Landlord, on July 1, about the July 31 end date. I find the Tenant did not provide one full month's written notice, meaning a notice of tenancy-end should have been provided by June 30 at the latest for the July 31 move-out date.

I acknowledge the Tenant paid the July 2025 rent in full; this amount was $22,000, confirmed by the Landlord in the hearing.

The *Act* s. 53 sets out:

1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I find the earliest date permitted under s. 45(1) is August 31, 2025. This accounts for one full month's written notice from the Tenant. I find the effective tenancy-end date in these circumstances is August 31, 2025.

The *Act* states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I determine the earliest effective tenancy-end date was August 31, 2025; therefore, I grant $22,000 for that month's rent to the Landlord for compensation in these circumstances. In granting this amount to the Landlord, I also account for the fact that the Tenant did not make their intention of staying throughout July – and even vaguely hinting at the following month of August – in their correspondence to the Landlord on June 21, and again on June 25.

For the Landlord's purported loss of $9,500 in these circumstances, I find they signed the new agreement with the new tenant on June 27, 2025, despite knowing of the Tenant's intention to remain in the rental unit, and without resolution to that matter. The communication from the Tenant to the Landlord, as set out above, was on June 21, 22, and 25. I dismiss this piece from the Landlord's claim for their own failure to mitigate in this situation.

For this same reason, I dismiss the Landlord"Sublandlord" claim for the amount of $25,500 they paid to the new tenant's new landlord on July 6. I find the Landlord was aware of the Tenant's intention to stay in the rental unit. Despite the compelling narrative surrounding the urgency of the situation, mostly brought on by the Tenant's notification to the Landlord rather late on June 21, I find the Landlord signed the new tenancy agreement with the new tenant in a negligent manner in the circumstances.

In sum, for compensation to the Landlord, I grant $22,000, representing the full amount of rent for the month of August 2025. I find the Tenant was bound, as per s. 45(1) of the *Act*, to provide one full month's written notice. This is the law in the situation of a periodic tenancy which I found was in place as of July 1, 2025.

c. *Is the Landlord authorized to retain all/part of the Tenant's security deposit?*

The Tenant paid a security deposit of $11,500. As of the tenancy-end date, July 31, 2025, the deposit accumulated interest. The Landlord completed this Application prior to the tenancy ending; therefore, I find the provision setting a doubling of the deposit (s. 38(6) of the *Act*) does not apply in this scenario.

I find the Landlord Application includes a claim against the security deposit for something other than damage in the rental unit (*i.e.*, other money owed). I find it is not relevant whether the Landlord's right to claim against the security deposit for damage has been extinguished under the *Act*.

The *Act* s. 72 provides that any amount payable from a tenant to a landlord may be deducted from any security deposit due to the Tenant. By this section, I grant the Landlord the full $11,837.02 security deposit amount. The Tenant shall pay the balance of the $22,000 compensation amount to the Landlord: this is $10,162.98.

d. *Is the Landlord eligible for recovery of the Application filing fee?*

e. *Is the Tenant eligible for recovery of the Application filing fee?*

I find each party was successful in their Application. It was necessary for the parties to each bring their Application forward to resolve the matter. I grant the Landlord the full amount of their $100 Application; however, this is offset by that of the Tenant, whom I also deem successful in their Application. I find each Application filing fee cancels out that of the other.

Conclusion

I provide the Landlord with a monetary order for $10,162.98. The Landlord must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 8, 2025

Residential Tenancy Branch