DECISION

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenant, in her own application, seeks the following relief under the *Act*:

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit;
- an order under ss. 44 and 62(3) that the tenancy was frustrated; and
- return of the filing fee pursuant to s. 72.

W.H. attended as the Landlord. The Landlord's husband, T.D., was present but did not participate. Y.L. attended as the Tenant. The Tenant had the assistance of F.R., who spoke on her behalf and translated English to Mandarin, and vice versa, on behalf of the Tenant.

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 noted that the hearing was automatically recorded by the Residential Tenancy Branch.

Service of the Applications and Evidence

The parties have provided a tenancy agreement which lists their respective email addresses as an address for service. I accept that email is an approved method of service in the contemplation of s. 43 of the Regulations.

The Landlord testified she served her application and initial evidence by way of email sent on August 8, 2025. I am told by her that she served additional evidence by way of emails sent on October 1, 2025 and the other sent 2 days before the hearing. F.R.

raised no issue with service of the Landlords documents, except for the evidence served 2 days prior to the hearing.

To be clear, Rule 3.14 of the Rules of Procedure requires applicants to serve additional evidence such that it is received by the respondents at least 14 days prior to the hearing. Rule 3.15 of the Rules of Procedure requires respondents to serve evidence such that it is received by the applicants at least 7 days prior to the hearing.

Dealing first with those documents the Tenant raised no issue with, I accept they were received by the Tenant as acknowledged by F.R. at the hearing. I find they were served in accordance with ss. 43(1) and 43(2) of the Regulations.

With respect to the evidence served 2 days prior to the hearing, the Landlord explained that this was responsive to evidence served by the Tenant on October 4, 2025. Even if I were to accept that to be true, the fact remains that there is seemingly no explanation for why the Landlord could not have served the document earlier.

It is not lost on me that both sides are applicants and respondents and that, because of this, it may be difficult to distinguish between the deadlines imposed by Rules 3.14 and 3.15 of the Rules of Procedure. Be that as it may, the Landlords' additional evidence failed even to comply with the 7-day deadline imposed by Rule 3.15.

I find it would be prejudicial to include evidence for which the Tenant had effectively no right to respond since it was served on mere days before the hearing. Accordingly, the Landlord's late evidence is excluded.

F.R. testified that the Landlord was served with the Tenant's application and initial evidence by way of 2 emails sent on August 18, 2025. Additional evidence, I am told, was emailed to the Landlord on October 4, 2025 in response to the Landlord's evidence sent on October 1, 2025. The Landlord acknowledges receipt of these documents and the Tenants' video evidence.

Accepting this, I find that the Tenant's application and evidence were served in accordance with ss. 43(1) and 43(2) of the Regulations. I accept they were served on time since the later package was received by the Landlord at least 7 days prior to the hearing.

Preliminary Issue – Landlord's Claims for Compensation

The Landlord, in her application, seeks other compensation of $15,400.00, describing the claim as follows:

> [Redacted] the tenant, signed a rental agreement with the landlord for a fixed one-year term starting May 1, 2025 to April 30, 2026. The tenant moved into the basement on May 1, 2025 and they moved out on July 28, 2025 without move-out notice to the landlord. During the three-month tenancy, the landlord offered

> excellent service to the tenants, and the tenant didn't complain about anything. The tenant is intentionally violating the RTB rules.

I have redacted personal identifying information in the interest of the parties' privacy.

Review of the Landlord's claim for unpaid rent shows that the description for both claims is identical to one another. At the hearing, I asked the Landlord what she was seeking on her claim for other compensation. I was told by her that she was seeking compensation for all lost rental income up to the end of a fixed-term lease after the Tenant allegedly vacated early.

Though I question the necessity of effectively claiming the same thing twice in the application, I accept that the Landlord is asking for lost rental income due to an alleged breach of the fixed-term tenancy agreement. Be that as it may, I will consider the claims as a single claim since they are the same. I will also consider the Tenant's claim that the tenancy was frustrated at the same time since it corresponds with the Landlord's claim that the tenancy ended early.

The Landlord also indicates that she is seeking $200.00 for garbage disposal and $400.00 for fence repair, though this has not been included in the application as an amendment. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application.

To be clear, if the Landlord wishes to obtain compensation from the Tenant, she must first give the Tenant notice of that, which can only occur in accordance with Rule 4 of the Rules of Procedure. This means an amendment to the application must be filed and served as soon as possible and received not less than 14 days prior to the hearing. That did not occur here. The monetary order worksheet is nothing more than a submission and cannot alter the underlying pleadings in the application itself.

I find that the Landlord's purported claims for other compensation is not, strictly speaking, before me since they are not set out in the application itself. As such, I make no findings on those claims since the Tenant did not receive proper notice of them prior to the hearing.

Issues to be Decided

1) Is the Landlord entitled to compensation from the Tenant for lost rental income or was the tenancy frustrated?
2) Is the Tenant entitled to compensation for damage or loss following the Landlord's breach of the *Act*, Regulations, or tenancy agreement?
3) Is either side entitled to the security deposit?
4) Is either side entitled to the return of their filing fee?

Evidence and Analysis

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

General Background

The parties confirm the following details concerning the tenancy:

- The Tenant moved into the rental unit on May 1, 2025.
- The Tenant moved out of the rental unit on July 28, 2025, returning the keys to the Landlord on July 31, 2025.
- Rent of $2,200.00 was due on the 1st day of each month.
- A security deposit of $1,100.00 was paid by the Tenant.

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 Landlord entitled to compensation from the Tenant for lost rental income or was the tenancy frustrated?

As noted above, the Landlord seeks compensation for lost rental income resulting from the Tenant vacating the rental unit prior to the end of the term for a fixed-term tenancy agreement.

The Tenant, in her application, seeks an order that the tenancy was frustrated, stating the following:

> 1)illegal suite, landlord did not disclose before the tenancy. [Redacted]. (P1) 2)Landlord refuse Inspection finding of black mold. (P2-P6) 3)Risks of fire:Elec.wiring overload, circuit breaker tripped when cooking. (P7-P8) 4)Risk of health:landlord raise chickens in the backyard(prohibited) after our move-in, the

> coop is just outside our window. [Redacted]. (P9) 5) Landlord talked/threatened tenants and mover: [Redacted]. Mover witness attached. (P10-P15)

Again, I have redacted information that could be used to potentially identify the parties.

A tenancy may only end in accordance with Part 4 of the *Act*.

A tenant may end a tenancy by giving notice to their landlord pursuant to s. 45 of the *Act*. In the case of fixed term tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice, cannot be earlier than the date specified in the tenancy agreement as the end of the tenancy, and is on a day before rent is due under the tenancy agreement.

A tenancy may also end under s. 44(1)(e) of the *Act* due to the frustration of the tenancy agreement.

Submissions

The parties advise that the Tenant came to reside in the rental unit, which is a basement suite located below where the Landlord resides, due to a personal friendship she had with the Landlord before the tenancy started.

The Landlord directed my attention to the tenancy agreement, which shows that it is for a fixed term ending on April 30, 2026. The Landlord testified that she received no notice that the Tenant was vacating the rental unit until she took note of a moving truck parked outside the property on July 28, 2025.

The Landlord says that she is seeking lost rental income to date as she has been unable to find a tenant for the rental unit. The Landlord says that she posted an advertisement for the rental unit on July 28, 2025 on Facebook Marketplace.

The Landlord's evidence contains copies of correspondence with prospective tenants, showing the rental unit is advertised for monthly rent of $2,580.00. The Landlord explained that the increase is on account that the Tenant was renting 2 out of the 3 bedrooms in the rental unit, whereas she is seeking someone to rent all 3 bedrooms. The Landlord advised that she has not adjusted the advertised monthly rent for the rental unit since posting the advertisement on July 28, 2025.

F.R. disputed that the Tenant did not provide any notice prior to July 28, 2025. The Tenant's evidence contains a text message sent to the Landlord where she says "I'm not renting your house. We're going through a process." F.R. says that there were other conversations between the parties whereby the Landlord would have known the Tenant was vacating the rental unit.

Both the Landlord and Tenant refer me to a letter sent by the Landlord to the Tenant on July 31, 2025. It states the following:

> The basement suite I stayed of your house has the following risks to endanger my staying any longer:

> 1. Fire Risk. As many of the previous communication, you have not repaired the electrical overload problem for months, which makes the circuit breaker trips from time to time.
>
> 2. Health Risk. You are keeping chicken in the backyard and the coop just outside my bedroom window, which put a great risk of disease and emotional pressure on us. It's prohibited by the city's bylaw to keep chicken in the house.
>
> 3. Bylaw Risk. You did not inform me that it is the illegal basement suite when I was applied for the rental. Illegal suite is not allowed to be rented untill (sic) it is legalized in [redacted] city.
>
> 4. Security Risk. You and your husband stalked our moving truck for hours and threated the mover and myself on July28. Even after the RCMP officer messaging you not to do it. We have evidence and witness from mover for that. You even broke in the basement on July. 28 without my acknowledge. The RCMP police officer has filed the abovementioned cases. Your behavior is the obvious threats for me.
>
> Based on these risks, as advice from Bylaw department of the city and police officer, I informed you on Jul. 03, 2025 that I am moving out. Today is July. 31, 2025 and you refused my request for the Move-Out-Inspection. Now I have vacanted (sic) the suite and returned it to you in good condition. The keys are kept under the basement doormat. (I have taken video to keep as proof for RTB). Please return my deposit through E-transfer. Otherwise I will claim it through RTB.
>
> This letter serves as the Notice to you by email and text message. For the records for RTB and future other uses if any.

Again, information that may personally identify the parties has been redacted.

The Tenant argues that the tenancy is frustrated. At the hearing, F.R. spoke to maintenance issues in the rental unit, namely that the kitchen was effectively unusable since the circuit breaker for the appliances would trip with any use of the stove or microwave. Though not discussed at the hearing, the Tenant’s written submissions also indicate there were issues with mould in the rental unit.

I am told that the Landlord brought chickens into the backyard, which F.R. was done contrary to the local bylaw. It was argued that the chickens were inappropriate since they were located near to the Tenants’ kitchen window.

F.R. further says that the rental unit was not permitted, such that it was illegal. I understand that the Tenant discovered this while speaking with the municipality when complaining of the Landlord’s chickens. F.R. says that the Tenant was told by the municipality to leave the rental unit since it was illegal.

Finally, the Tenant alleges that the Landlord harassed the Tenant. F.R. alleges the Landlord stalked the Tenant by following her moving truck when vacating the rental unit at the end of July 2025.

Findings

Policy Guideline 34 provides guidance on the doctrine of frustration, which discharges parties to a contract of fulfilling any further obligations under the contract after circumstances make performance impossible. It states 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.

In this case, the Tenant alleges the tenancy agreement was frustrated due to repair issues, the lack of a permit for the rental unit, and a chicken coop. There are other allegations tied to the Landlord's conduct. In brief, I find that the Tenant has failed to demonstrate the tenancy agreement was frustrated.

Looking first to the repair issues, building components breakdown and they need to be repaired. Typically, this is a landlord's responsibility under s. 32(1) of the *Act*. In the case of emergency repairs, which include the electrical system, these are considered emergency repairs under s. 33 of the *Act*.

I provide this context because even if the repair issues complained of by the Tenant were present, it does not mean the tenancy agreement is frustrated. Again, repairs are generally contemplated through the course of a tenancy. The Tenant cannot seriously argue that the purported electrical and, potentially, mould issue were of such a nature to render performance of the contract impossible.

The Tenant had options. She could have filed for an order for repairs, either under general repairs under s. 32(1) or for emergency repairs under s. 33. The Tenant did neither. Rather, she left the rental unit under the mistaken belief she could do so without consequence.

The Tenant says that the rental unit did not have permits from the municipality. Again, even if this were true, it does not mean the rental unit was de facto completely unsuitable as a living accommodation. I was not told there was a do not occupy order from the municipality nor was I given a copy of the order, if one exists. Rather, I am told municipal staff told the Tenant to vacate since there was no permit.

First, I doubt municipal staff would be so explicit recommending a course of action without some inspection of the rental unit to assess its use as a living accommodation. Second, even if they did provide that recommendation, I find it does not amount to a do not occupy order that would obligate the Tenant to vacate. Instead, the rental unit was otherwise suitable for occupancy except for some relatively benign repair issues that could have been resolved in the normal course of things. I find the lack of permit to be entirely irrelevant on whether the rental unit was suitable for occupancy as living accommodation.

I am told the Landlord got chickens for her backyard, again without a permit. I find this to be entirely irrelevant to the suitability of the rental unit as a living accommodation. Chickens are not a health risk unto themselves, nor would their presence <u>outside</u> the rental unit be of any concern to the Tenant. Again, the chickens, permitted or not, does not render the tenancy agreement frustrated and performance impossible.

Finally, the Tenant alleges harassment from the Landlord, citing issues at the end of July 2025. However, review of the letter from July 31, 2025 cite issues that arose after the Tenant began moving out of the rental unit on July 28, 2025. The Tenant cannot seriously believe that her tenancy was frustrated due to the Landlord's conduct that occurred after she effectively moved out.

I find that the tenancy did not end due to it being frustrated.

Flowing from this, I find that the Tenant failed to give proper notice that she was vacating the rental unit. Under s. 45(2) of the *Act*, she had to give written notice with an effective date no sooner than the end of the fixed term in her tenancy agreement. This means the soonest the Tenant could vacate based on notice to the Landlord was on April 30, 2026. Even if I accept the message from July 4, 2025 constitutes notice to the Landlord, it failed to provide effective notice. Further, I find it more likely that the Landlord had no clear idea the Tenant was vacating until the moving truck showed up at the rental unit given the general ambiguity of the text message from July 4, 2025.

I find that the Landlord has established that the Tenant failed to give proper notice to end her tenancy in contravention of s. 45(2) of the *Act* and ended her tenancy in breach of the fixed term ending on April 30, 2026. I accept that the Landlord suffered a loss of rental income given she had effectively no clear notice the Tenant was vacating until July 28, 2025 when the moving truck showed up outside her home.

The Landlord indicates that she posted the rental unit for advertisement on July 28, 2025 for rent of $2,580.00, which exceeds rent payable by the Tenant under her tenancy agreement. I question the advisability of doing so considering the Tenant was paying $2,200.00, though I accept that the Landlord was testing the rent she could

obtain by renting out 3 bedrooms rather than 2. Despite this exploratory marketing by the Landlord, she then failed to take any steps to reduce the marketed monthly rent, rather leaving the rental unit vacant up to the date of this hearing.

I find that the Landlord has failed to mitigate her loses by taking reasonable steps to market her rental unit, which is in contravention of s. 7(2) of the *Act*. The Landlord cannot sit idly by with the rental unit vacant with the expectation that the Tenant will continue to cover her ongoing loss until April 30, 2026. The Landlord must take reasonable steps, which includes posting advertisements widely and adjusting the advertised rental rate to secure a tenant. The rental unit must be actively marketed.

Considering this, I accept that the Landlord's loss of rental income for August 2025 was a foregone conclusion given the Tenant vacating without any clear notice until July 28, 2025 when the moving truck showed up outside the residential property. Accordingly, I grant the Landlord compensation of $2,200.00 for August's lost rental income and find that the remaining claim for lost rental income cannot be granted due to the Landlord's failure to mitigate her losses by failing to take reasonable steps when marketing the rental unit.

1) ***Is the Tenant entitled to compensation for damage or loss following the Landlord's breach of the Act, Regulations, or tenancy agreement?***

The Tenant, in her application, seeks $1,530.00 in compensation, describing her claim as follows:

> Moving Fee: $1250.00. Rent in July.28-Jul.30: $280

Given that I find that the tenancy was not frustrated and the Tenant ended her tenancy in contravention of Part 4 of the *Act*, I find that the Tenant has failed to establish she entitled to moving costs from the rental unit and pro-rated rent from the end of July 2025. The Tenant cannot obtain compensation when it was her actions that resulted in the tenancy ending.

I dismiss the Tenant's claim for compensation, in its entirety, without leave to reapply.

2) ***Is either side entitled to the 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 am told by the parties that the Tenant has not provided her forwarding address to the Landlord. Accepting this, I find that s. 38(1) has not been triggered such that the question of when the Landlord filed her application claiming against the security deposit is irrelevant.

Given the Landlord's partial success, I direct under s. 72(2) of the *Act* that the Landlord retain the Tenant's security deposit, and interest on the security deposit, in partial satisfaction of what she is owed by the Tenant. As a result of this, the Tenant's claim for the return of her security deposit is dismissed, without leave to reapply.

Interest is imposed by s. 38(1)(c) of the *Act*. In this case, it is $6.16. I have calculated this by use of the Residential Tenancy Branch's deposit interest calculator for the entire period it has been held in trust by the Landlord, being from its receipt on March 15, 2025 as noted in the tenancy agreement to the date of this decision.

In total, $1,106.16 will be offset from the monetary order granted to the Landlord.

3) Is either side entitled to the return of their filing fee?

I find that the Tenant was unsuccessful and is not entitled to her filing fee. Her claim under s. 72(1) of the *Act* is dismissed, without leave to reapply.

I find that the Landlord had partial success, though was substantially unsuccessful relative to what she claimed on her application. Considering this, I find that she too is not entitled to her filing fee. I dismiss her claim under s. 72(1) of the *Act*, without leave to reapply.

Conclusion

I dismiss the Tenant's application, in its entirety, without leave to reapply.

I grant the Landlord $2,200.00 for lost rental income.

I dismiss the Landlord's claim for her filing fee, without leave to reapply.

I direct that the Landlord retain the Tenant's security deposit, and interest for the security deposit, totalling $1,106.16 in partial satisfaction of what she is owed by the Tenant.

In total, I order under ss. 67 and 72 of the *Act* that the Tenant pay **$1,093.84** to the Landlord ($2,200.00 - $1,106.16).

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: October 15, 2025

Residential Tenancy Branch