

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The tenant requested:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act

J.C. and B.V. attended for the Landlord. The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, their application is dismissed, without leave to reapply.

Service of Application and Evidence

The Landlord's agents testified that they had served their dispute resolution package and evidence to the Tenant by way of email service on August 18, 2025, to the email provided by the Tenant for serve as per the Tenancy Agreement Addendum. In accordance with sections 88, 89, and 90 of the Act, I find the Tenant deemed served with the Landlord's application and evidence package, five days after emailing.

Preliminary Issues

The Landlord confirmed that the Tenant had moved out, and that they no longer require an Order of Possession. Accordingly, the non-monetary portions of the Landlord's application were cancelled, and the hearing proceeded to deal with the monetary claims only.

The Landlord requested an amendment to include additional rent owed by the Tenant while waiting for the hearing date. Although the landlord had applied for a monetary Order of \$4,900.00 in their initial claim for unpaid rent, since they applied another \$4,900.00 rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$4,900.00 to \$9,800.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent, money owed or compensation under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

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

Evidence was provided showing that this fixed term tenancy began on October 1, 2024, and was to end on September 30, 2025. Monthly rent was set at \$4,900.00, due on the first day of the month. The landlord holds a security deposit in the amount of \$2,450.00.

The Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on August 2, 2025. The Landlord filed an application on August 18, 2025 to request an Order of Possession as the Tenant did not move out by the effective date of the 10 Day Notice, nor did the Tenant pay the outstanding rent for August 2025. The Tenant moved out before the scheduled hearing date.

The Landlord requested the following monetary orders: \$9,800.00 in outstanding rent for the months of August and September 2025, \$25.00 for the unpaid late fee for August 2025, \$4,900.00 for liquidated damages as set out in the tenancy agreement, and recovery of the filing fee.

Analysis

Is the Landlord entitled to a Monetary Order for unpaid rent, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the Tenant failed to pay any rent for August and September 2025, and did not have the right to withhold this money. Accordingly, I grant the Landlord's monetary claim for the unpaid rent, plus the \$25.00 filing fee.

The Landlord also requested \$4,900.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 states the following with respect to Liquidated Damages and the interpretation of such clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a

penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

I have reviewed the written tenancy agreement submitted by the landlord. The two parties had agreed to the following:

“Lease Default: Should the tenant fail to take possession of the premises, or have abandoned or vacated the premises before the expiry of the tenancy created in the lease agreement; The tenant will automatically be responsible for all rent lost due to suite vacancy. There will also immediately become payable by the tenant to the landlord the sum of one month's current rent which shall be paid to the landlord to cover the costs related to the changeover in tenancy. The Landlord reserves the right to deduct the above amount from the Tenants security deposit.”

Although I am satisfied that the Landlord had clearly stipulated on the tenancy agreement that the Tenant would be responsible for the amount claimed by the landlord as Liquidated Damages in the event that the Tenant abandons or vacates the premises before the end of the fixed term, I find that that despite the circumstances, the tenancy did continue until the last month of the fixed-term. As noted above, I had allowed the Landlord to recover the rental loss for the full month for September 2025, the last month of this fixed term tenancy.

I find that the Tenant would have been obligated to move out by September 30, 2025, as per the fixed-term agreement, and as such, the costs associated with a changeover would have been incurred by the Landlord regardless. I am not satisfied that the amount requested is not penalty, rather than a genuine pre-estimate of losses associated with filling this vacancy. Accordingly, I dismiss the Landlord's claim for liquidated damages, without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Under section 72 of the Act, I allow the Landlord to retain the Tenant’s security deposit, plus applicable interest, in partial satisfaction of the monetary awards granted.

Conclusion

The Tenant’s application is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$7,436.68** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for money owed or compensation under the Act, regulation or tenancy agreement under section 67 of the Act	\$9,825.00
authorization to retain all or a portion of the Tenants’ security deposit, plus interest, in partial satisfaction of the Monetary Orders requested under section 38 of the Act	-\$2,488.32
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$7,436.68

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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 10, 2025

Residential Tenancy Branch