

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) by the parties:

The Landlord applied for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenants' security and pet damage deposits 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 Tenants under section 72 of the Act

The Tenants applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and pet damage deposits under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)

Both parties acknowledged receipt of the Proceeding Packages and raised no concerns regarding service. I therefore found the Proceeding Packages duly served in accordance with the Act, and the hearing proceeded as scheduled.

Service of Evidence

Both parties acknowledged receipt of the documentary evidence and agreed to its inclusion.

Due to this agreement, I find the parties' evidence properly served using my authority under section 71(2) of the Act and accepted it for consideration.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Is the Landlord entitled to retain all or a portion of the Tenants' security and pet damage deposits in partial satisfaction of the Monetary Order requested under the Act?

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

Are the Tenants entitled to a Monetary Order for compensation for damages or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and pet damage deposits under the Act?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

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

A copy of the tenancy agreement was provided by both parties showing that this tenancy began on August 1, 2025, with a monthly rent of \$2,750.00, due on first day of the month, with a security deposit in the amount of \$1,375.00 and a pet damage deposit in the amount of \$1,375.00. Both parties agreed that the Tenants paid rent for August 2025 and their deposits, with the tenancy agreement indicates the following clauses:

4. RENTAL PERIOD AND TERMS OF TENANCY.
- The tenancy created by this Agreement STARTS ON August 1, 2025
- A. and continues on a month to month basis until cancelled in accordance with the Act.
- B. and is for a fixed term ending on July 31, 2026
- IF YOU CHOOSE B, CHECK C OR D
- C. At the end of this time the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term.
- D. At the end of this time the tenancy is ended and the tenant **must vacate** the rental unit. This requirement is only permitted in circumstances prescribed in section 131 of the Residential Tenancy Regulations, or if this is a sublease agreement as defined in the Act.
- Reason tenant must vacate (required): _____
- Residential Tenancy Regulation section number (if applicable): _____
- IF YOU CHOOSE D, BOTH THE LANDLORD AND THE TENANT MUST INITIAL HERE
- LANDLORD'S INITIALS _____ TENANT'S INITIAL _____
5. LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$2750.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Additionally, the tenant will pay any rental revenue losses or damages caused by the early end of the tenancy, and any other amounts owing to the landlord under this Agreement.

K.L. stated that the tenancy was a fixed term tenancy set to end on July 31, 2026. However, he admitted that the month to month box on the tenancy agreement was also mistakenly checked off.

Tenant D.C.N. stated that he initially assumed that it was a fixed term tenancy based on the parties' conversations. However, it became unclear to him as the month to month box was checked off.

On August 24, 2025, the Tenants notified the Landlord that they had not moved into the rental unit and requested for the return of their security and pet damage deposits and the August 2025 rent. On August 25, 2025, the Tenants provided their forwarding address to the Landlord.

The Tenants submitted that upon arrival, they observed extensive construction throughout the neighbourhood around the property, significantly interfering with their rights to quiet enjoyment and that this had constituted a misrepresentation on the Landlord's part as it was not disclosed to them at the signing of the tenancy agreement or visible during their tour.

On September 15, 2025, the Landlord applied for dispute resolution to retain the security and pet damage deposits, seeking for the loss of rental income of September 2025 and liquidated damages of \$2,750.00.

K.L. testified that the rental unit was shown to potential tenants on many occasions but had not been re-rented as of date of the hearing.

On October 1, 2025, the Tenants applied for dispute resolution for the return of their security and pet damage deposits and the August 2025 rent.

The Tenants submitted that the tenancy agreement was frustrated due to the Landlord's misrepresentation. They argued that the definition of "uninhabitable" varies among individuals and that the rental unit was uninhabitable to them as it would have exacerbated Tenant L.M.G.F.'s chronic health issues. They further submitted that they were entitled to end the tenancy due to a breach of the entitlement to quiet enjoyment which has been found by the courts to be a breach of a material term of a tenancy agreement.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

Rule 6.6 of the Rules of Procedure states that 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.

Is the Landlord entitled to a Monetary Order for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

Section 67 of 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.

Awards for compensation are provided in section 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

All four conditions of the abovementioned test must be satisfied to be awarded compensation.

Frustration

Section 44(1)(e) of the Act states that a tenancy ends if the tenancy agreement is frustrated.

Residential Tenancy Policy Guideline #34 states that: "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.

Based on the evidence before me, the testimony of the parties and on a balance of probabilities, I find the Tenants have failed to prove that the tenancy agreement was frustrated. In reaching this conclusion, I find the Tenants have not provided sufficient evidence to establish that there was a radical change in circumstances that totally affect the nature, meaning, purpose, effect and consequences of the tenancy agreement. While I acknowledge the Tenants' distress due to the extensive construction in the

neighbourhood, I find this has not radically changed the circumstances rendering the rental unit uninhabitable.

Ending Tenancy for Breach of a Material Term

Policy Guideline #30 states that a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Policy Guideline #6 states that a breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the Act, a tenant may, with written notice, end a tenancy due to the breach of a material term. The standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the premises. Compensation for damage or loss may be more appropriate, depending on the circumstances.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenants have failed to prove that the Landlord was in breach of the Tenants' entitlement to quiet enjoyment. In reaching this conclusion, I note that the Tenants have never moved into the rental unit. As such, they have failed to establish that there was a significant interference with the use of the rental unit.

Fixed term tenancy

Although the Tenants submitted that it was a month to month tenancy as the box was checked off, I find it more likely than not that it was a fixed term tenancy. In reaching this conclusion, I note from Tenant D.C.N.'s testimony that he initially assumed that it was a fixed term tenancy based on his conversations with the Landlord. I also note from his September 5 email to the Landlord when he described the tenancy being a fixed term one with the following wordings:

For context, there have been similar cases at the RTB where tenants were able to end their tenancy early and receive a full deposit back due to undisclosed construction and disruption of quiet enjoyment, even when the tenancy was technically a fixed-term agreement. These cases demonstrate that tenants in situations like ours can prevail when they have proper documentation and serve notice under Section 45(3).

Section 45(2)(b) of the Act states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Policy Guideline #3 states that when a landlord ends a fixed term tenancy early as a result of the tenant's actions, the landlord may be able to claim the loss of rent 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.

A landlord has a duty to minimize loss of rental income. Policy Guideline #5 states that when a tenant ends a tenancy before the end date of the tenancy agreement, a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

September 2025 Rent

I have reviewed the tenancy agreement and accept that the parties entered into a fixed-term tenancy that was set to end on July 31, 2026. As such, I find the Tenants was in breach of section 45(2)(b) of the Act when they ended the tenancy before July 31, 2026.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord had taken reasonable steps to mitigate their loss by re-renting the rental unit as soon as they received the Tenants' notification on August 24, 2025.

As such, I find the Landlord is entitled to a Monetary Order for the rent of September 2025 under section 67 of the Act, in the amount of \$2,750.00.

Liquidated Damages

Policy Guideline #4 provides for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty.

I note that under clause 5 of the tenancy agreement, the Tenants agreed to pay \$2,750.00 as liquidated damages in the event they ended the fixed term early.

Based on the evidence before me, the testimony of the parties and on a balance of probabilities, I find the amount payable under the liquidated damages clause to be a reasonable pre-estimate re-rent costs and is not a penalty.

Therefore, I grant the Landlord's request to recover liquidated damages of \$2,750.00 from the Tenants.

Is the Landlord entitled to retain all or a portion of the Tenants' security and pet damage deposits in partial satisfaction of the Monetary Order requested under the Act?

Under section 38(1) of the Act, the deadline for the landlord to return the tenant's security and pet damage deposits or to file to claim against them is within 15 days of the

last day of the tenancy, or the date that the landlord received the tenant's forwarding address, whichever is later.

As the Tenants gave their forwarding address on August 25, 2025 and rent was paid up to August 31, 2025, the deadline for the return of the deposits or to file to claim against them is September 15, 2025. The Landlord did not return the deposits but claim against them for September 2025 rent and liquidated damages within the period permitted by the Act.

However, Policy Guideline #31 states the landlord may apply to keep all or a portion of the pet damage deposit but only to pay for damage caused by a pet. **A pet damage deposit cannot be held by a landlord for any liability other than pet damage.**

If a landlord retains the pet damage deposit and has not filed for compensation for damage caused by a pet within 15 days, the pet damage deposit is doubled.

As the Landlord's claim is unrelated to the damage caused by a pet, they were required to return the pet damage deposit to the Tenants by September 15, 2025.

Under section 38(6) of the Act, the value of the pet damage deposit is doubled from \$1,375.00 to \$2,750.00 because the Landlord's claim was unrelated to damage caused by a pet and did not return the deposit by September 15, 2025. With reference to Policy Guideline #17, interest is calculated on the original deposit amount and is not doubled. The interest on the pet damage deposit as of date of the hearing is \$7.70.

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

As the Landlord was partially 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.

Are the Tenants entitled to a Monetary Order for compensation for damages or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

The Tenants argued that they were entitled to the return of the August 2025 rent as the Landlord was in breach of section 28 of the Act for failing to provide quiet enjoyment of the rental unit.

Section 28 of the Act states the tenant is entitled to quiet enjoyment.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants have failed to prove that the Landlord has contravened section 28 of the Act. As previously stated, since the Tenants have never moved into the rental unit. As such, I find they have failed to establish that there was a significant interference with the use of the rental unit.

Furthermore, I find the Tenants have failed to prove that they took reasonable steps to minimize their loss as required under Policy Guideline #5 and section 67 of the Act to be awarded compensation for their loss.

Policy Guideline #5 states that a person who suffers damage or loss because their landlord did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and commonsense steps to prevent or minimize avoidable damage or loss.

For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Steps that the Tenants could have taken to minimize their loss may include to file an application for dispute resolution at the beginning of the tenancy for monetary compensation for the Landlord's failure to provide a quiet enjoyment under section 28 or the Landlord's failure to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law under section 32(1) of the Act.

I find the steps the Tenants had taken could not be considered as "practical and commonsense" steps as stated in Policy Guideline #5.

For the above reasons, the Tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and pet damage deposits under the Act?

As I have found that the Landlord is entitled to retain the Tenants' security deposit of \$1,375.00 plus \$7.70 accrued interest and that the Landlord is not entitled to retain the Tenants' pet damage deposit, the Tenants are entitled to a monetary award for the return of the double amount of pet damage deposit, being \$2,750.00, plus \$7.70 accrued interest.

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

As the Tenants were partially successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$1,359.60 under the following terms:

Monetary Issue	Granted Amount
Landlord's Monetary Order for September 2025 rent	\$2,750.00
Landlord's Monetary Order for liquidated damages	\$2,750.00
Landlord's authorization to recover the filing fee for their application from the Tenants under section 72 of the Act	\$100.00
<i>Landlord's authorization to retain the Tenants' security deposit plus interest</i>	<i>-\$1,382.70</i>
<i>Tenants' Monetary Order for the return double amount of pet damage deposit plus interest</i>	<i>-\$2,757.70</i>
<i>Tenants' authorization to recover the filing fee for their application from the Landlord under section 72 of the Act</i>	<i>-\$100.00</i>
Total Amount	\$1,359.60

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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: December 11, 2025

Residential Tenancy Branch