

## **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. 38 and 67 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; and
- return of the filing fee pursuant to s. 72.

A.M. and D.P. attended as the Landlord’s agents. U.V. attended as 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 agent A.M. testified that the Tenant was served with the Landlord’s application by way of email sent on October 5, 2025 with additional evidence sent via email on December 21, 2025.

The Tenant acknowledged receipt of these materials, only noting issue with one of the pdf documents, which she says was inaccessible to her. The Tenant says that she only took note of the issue immediately before the hearing and did not reach out to the Landlord to request the document be sent again.

The Landlord has provided a copy of a form RTB-51 confirming the parties have exchanged email as addresses for service.

I accept that the Tenant was served with the Landlord's application and evidence by way of emails sent on October 5, 2025 and December 21, 2025. I find that this was done in accordance with ss. 43(2) and 43(1) of the Regulations. I further accept that these were received by the Tenant without issue, except for a pdf document that was inaccessible.

Rule 3.10.5 of the Rules of Procedure requires all digital evidence, which includes pdf documents, to be accessible to all parties. Further, Rule 3.10.5 requires parties that provide digital evidence to the other party to confirm that they can access the evidence.

It was argued by the Landlord's agent that the Tenant failed to confirm she could access the evidence except for immediately before the hearing. However, Rule 3.10.5 puts the onus on the party serving evidence to take the proactive step in confirming the recipient can access the evidence that was sent. I have been provided no evidence to support that has occurred here.

I accept that the Tenant was unable to access one of the files provided by the Landlord, such that I find it was not effectively served since she has received no notice of its contents. Accordingly, I find it would be procedurally unfair to include the evidence such that I exclude it and will not consider it.

The Tenant advises that she served her application and evidence on the Landlord by email. The agent K.M. indicates that the Tenant's application was received without issue, but that the Tenant's evidence was served on December 31, 2025. The agents argued it was late and should be excluded.

Rule 3.14 of the Rules of Procedure requires applicants to serve their additional evidence such that it is received by each named respondent at least 14 days before the hearing. Rule 3.15 of the Rules of Procedure requires respondent to serve their evidence such that it is received by each named applicant at least 7 days before the hearing.

Highlighting the relevant deadlines, I find that irrespective of how the Tenant's evidence is characterized, either being responsive to the Landlord's application or in support of her own application, it was late having been served less than 7 days before the hearing conducted on January 5, 2026.

The Tenant explained that she did so because she required additional time to finalize her evidence, though she also said that much of it was prepared in support of another application she filed but withdrew in November 2025. The Tenant argued that the Landlord has much of the evidence regardless in its own materials.

As I stated at the hearing, I am generally inclined to show some flexibility to inclusion of evidence in circumstances where parties are both applicants and respondents. I do so by acknowledging that it is not always clear when evidence is responsive to another

application or supportive of the party's application. However, flexibility should not come at the expense of a responding parties' right to fair notice and, when necessary, opportunity to respond.

I find the Tenant's explanation for why she served her evidence late to be little more than an excuse. The Tenant's own submissions support that she had much of the evidence prepared in November 2025 when she filed her previous application. Further, the Tenant had every opportunity to serve her evidence sooner but simply failed to do so.

I further find it unpersuasive for the Tenant to say the Landlord has the evidence in its possession. Strictly speaking, this is not in fact true as some of the materials the Tenant has provided is not in the Landlord's possession. Further, the Landlord should not be in a position of guessing what the Tenant will or will not be relying upon until less than 5 days before the hearing. The Tenant's conduct on service has all but effectively deprived the Landlord any meaningful opportunity to provide response evidence to the Tenant's application.

Upon consideration of the submissions regarding service of the Tenant's evidence, I find it would be procedurally unfair to include it. I canvassed the possibility of adjourning the matter with the parties, outlining the risks of proceeding from the possible exclusion of either Landlord's evidence that was inaccessible and/or the Tenant's evidence. Both sides wished to proceed with the hearing.

Since the Tenant's evidence was not properly served on time, I exclude it and the hearing proceeded.

## **Preliminary Issues**

### **Parties Named in the Tenant's Application**

The Tenant named a co-tenant, O.D., and named D.P. as a co-landlord. This differs from the Landlord's application and the tenancy agreement, which names neither though notes O.D. is an occupant and a minor.

To be clear, landlord-tenant disputes are, at their core, contractual in nature. This is to say that only individuals and persons party to an agreement are subject to its rights and obligations. Flowing from this, parties in an application to the Residential Tenancy Branch should be named as listed in the tenancy agreement.

The Tenant confirmed that O.D. is her child and that he is a minor. D.P. confirmed that he merely acts as agent for the Landlord. I accept that neither O.D., nor D.P., are party to the tenancy agreement, which is confirmed by the tenancy agreement in evidence. I raised this issue with the parties and neither took issue with their removal from the Tenant's application.

Accordingly, I amend the Tenant's application to remove her minor child as a co-tenant and D.P. as a co-landlord.

### Landlord's Claim for Monetary Compensation

The Landlord, in its application, seeks \$100.00 in claim 02 of its application, describing it as a claim for the filing fee. The Landlord also requests the filing fee in claim 04 of its application.

I find that claim 02 of the Landlord's application is duplicative and seeks the filing fee, which is relief sought elsewhere. It ought not to have been claimed and, as such, I dismiss the claim since it would be improper to grant the Landlord \$100.00 twice for the single filing fee.

### **Issues to be Decided**

- 1) Is the Landlord entitled to compensation for lost rental income?
- 2) Is the Tenant entitled to compensation resulting from the Landlord's breach of the *Act*, Regulations, or tenancy agreement?
- 3) Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit, or should the deposits be returned to the Tenant?
- 4) Is either side entitled to 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 with respect to the tenancy:

- The Tenant moved into the rental unit on December 15, 2024.
- The Tenant moved out of the rental unit on July 31, 2025.
- Rent of \$2,195.00 was due on the first day of each month.
- A security deposit of \$1,097.50 and a pet damage deposit of \$1,097.50 was paid by the Tenant.

As noted above, I have been given a copy of the written tenancy agreement.

### Legal Test for 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 for lost rental income?***

The Landlord, in its application, seeks \$2,195.00 in compensation for lost rental income, describing its claim as follows:

Tenant had a lease starting Dec 15, 2024 - Dec. 31, 2025 with monthly rent of \$2195. Tenant breaking lease by moving out July 31, 2025. Tenant now owes rent for Aug 1-31, 2025 for \$2195. The landlord placed ads, conducted showings, had replies but did not have a tenant for the entire month of Aug. With Landlord's permission to sublet or assign lease, the tenant also placed ads but also did not have any success in finding a replacement tenant for Aug.

A.M. testified that the Tenant moved out of the rental unit on July 31, 2025, though her tenancy was set to end on December 31, 2025. D.T. says that the Tenant requested on March 31, 2025 to end the tenancy early. The agents indicate that they were agreeable to subletting or assigning the tenancy, though would only agree to end the tenancy if a new tenant was found.

The Landlord's evidence contains an email from the Tenant dated March 31, 2025, in it, she states the following:

hope this finds you well. I am writing to inform you that I would like to end tenancy earlier than the agreed 1-year term (with preferrable last date of tenancy April 30, 2025) due to various reasons. I would like to ask you to review the ending of tenancy through the options of either: 1) mutual agreement; 2) assignment of the tenancy. On my side, I can offer help with finding replacement tenants by helping with advertising the rental unit and making it accessible for regular viewings. Please see the respective letters attached: and let me know about the preferable option.

Thank you for your consideration,

A.M. tells me that the Landlord posted advertisements for the rental unit beginning in April 2025. Later on in cross-examination, A.M. testified that the advertisements were posted on Facebook, Craigslist, and Zumper, with the Landlord paying to boost the advertisements.

D.T. indicates that the Landlord asked the Tenant in mid-April 2025 if they could reduce the advertised rent. The Landlord's evidence contains an email to this effect dated April

15, 2025. The agents say that the Tenant did not agree to doing so, such that they continued to advertise the rental unit at the rent paid by the Tenant. They argue that this impacted the Landlord's ability to secure a prospective tenant.

The Landlord's agents further says that the Tenant had a dog, which proved problematic since it was kept in a room in the rental unit and barked. They say this scared away some prospective tenants. D.T., on cross-examination, says that they asked the Tenant on 3 occasions to remove her dog during showings, and that 2 prospective tenants did not view the bedroom the dog was kept in due to their concerns with doing so.

A.M. says that the Tenant gave notice to end tenancy on June 30, 2025 to vacate the rental unit on July 31, 2025. I have been given a copy of that notice to end tenancy. I am told by A.M. that the rental unit was unoccupied for August 2025, with a new tenant moving in on September 1, 2025 paying the same rent as was paid by the Tenant under her tenancy agreement.

The Tenant says that she sought to end her tenancy due to repair related issues and privacy issues with the ground floor rental unit, though she acknowledges that she did not communicate this to the Landlord when she gave notice to vacate.

The Tenant confirmed that the Landlord agreed to end the tenancy earlier if a replacement was found, with the Tenant posting advertisements as well on Facebook, Craigslist, and Kijiji. The Tenant says that the agents asked that she forward the replies to her advertisements to them.

### Analysis

Part 4 of the *Act* sets out how a tenancy may end. Relevant to these circumstances, s. 45 of the *Act* provide for how a tenant may end their tenancy.

In the case of a fixed term tenancy, under s. 45(2) of the *Act* a tenant may give a notice to end tenancy to their landlord ending their tenancy with an effective date that is not earlier than a month after it is received by the landlord, is not earlier than the end of the fixed term, and is the day before rent is due under the tenancy agreement.

I have little difficulty finding that the Tenant failed to give notice to end her tenancy in accordance with s. 45(2) of the *Act* considering the effective date of July 31, 2025 was sooner than the end of the fixed term, which ended on December 31, 2025.

There was considerable discussion regarding marketing efforts by the Landlord and the Tenant and the efforts to mitigate the losses. I find this discussion largely irrelevant since it fails to consider that the Tenant only gave notice to end her tenancy on June 30, 2025. The email from March 31, 2025 was merely a request to break the lease early, one for which I accept the Landlord was agreeable to if a new tenant was secured. The rubber, however, only met the road on June 30, 2025 upon the Tenant delivering her notice to end tenancy to the Landlord setting an effective date of July 31, 2025.

I find that the Landlord's obligation to mitigate its losses, as required under s. 7(2) of the *Act*, is only triggered upon the Tenant's breach of the *Act*, Regulations, or tenancy agreement, which occurred on June 30, 2025 when she delivered her notice to end tenancy to the Landlord. Up until that point, I find that the Landlord and Tenant were working cooperatively to find some resolution to the Tenant's request to leave early for personal reasons. Strictly speaking, the Landlord's efforts in marketing the rental unit in the spring of 2025 before the notice to end tenancy was issued was largely voluntary since any potential breach of the fixed term was merely anticipatory at that time.

Though the Landlord cited issues with the Tenant's dog, I find that this was a limited issue and only related to showings that predate the triggering of the Landlord's obligation to mitigate its losses upon receipt of the Tenant's notice to end tenancy.

The Tenant argued that she wished to leave the rental unit due to repair issues and privacy issues with the rental unit, which was located on the ground floor. That may well be the case. However, the Tenant cannot avoid her obligations under the tenancy agreement without giving notice to the Landlord to this effect. Under s. 45(3) of the *Act*, a tenant may end their tenancy for breach of a material term provided they give their landlord written notice of the breach, giving them a reasonable time to correct the breach, and only then can they end their tenancy. That simply did not occur here considering the Tenant acknowledged not having given any notice of these issues to the Landlord.

I find that the Landlord has established that the Tenant failed to give notice in accordance with s. 45(2) of the *Act* and, in doing so, breached the fixed term of the tenancy agreement. I accept that the Landlord suffered a loss of a month's rent, with the new tenant moving in on September 1, 2025.

I find that the Landlord had been marketing the rental unit for many months before the Tenant moved out, securing a tenant a month after the tenant vacated. Considering a new tenant was secured shortly after the Tenant left the rental unit, I accept it likely that the Landlord had greater success marketing the rental unit once the Tenant had vacated, such that I accept it mitigated its losses to the extent possible.

I find that the Landlord has demonstrated that it is entitled to \$2,195.00 in compensation as lost rental income for August 2025 and grant it this amount.

**2) *Is the Tenant entitled to compensation resulting from the Landlord's breach of the Act, Regulations, or tenancy agreement?***

The Tenant, in her application, seeks \$1,479.30 in compensation, describing her claim as follows:

I request compensation for monetary losses due to the unit being uninhabitable or uncomfortable. This includes three weeks in February 2025 at ~15°C causing sleep disruption (Evidence #1, 8–9) -1/2 of Feb rent, ongoing ant and occasional mice issues affecting habitability (Evidence #3–7)-\$300.00, and reimbursement for advertising expenses while assisting re-renting (Evidence #10–13)-\$81.86.

Section 32(1) of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant.

### Advertising Expense Claim

In brief, the Tenant seeks \$81.86 in compensation on the basis that she paid to boost her advertisements she posted for the rental unit. I find that the Tenant is not entitled to this amount.

The Tenant is ultimately responsible for the circumstances that resulted in the need to post the advertisements for her rental unit. The Tenant may have argued that there were issues with the rental unit's state of repair and privacy. However, these were not communicated to the Landlord in a manner that would permit it to take any steps to correct the issues, assuming they were present at all. The Tenant cannot assert a claim for advertising expenses due to her own breach of the *Act* and tenancy agreement.

The fact is that the Tenant expressed her wish to leave the rental unit for personal reasons, which then prompted her and the Landlord to post advertisements to permit her to do so. As it turned out, a new tenant was only secured on September 1, 2025 despite their efforts to find someone earlier. I find that the costs paid by the Tenant to have her end her tenancy sooner are not attributable to the Landlord.

### Loss of Heat

The Tenant says that on February 1 or 2, 2025, she reported heating issues with her rental unit to the Landlord. I am told by her that it was 15°C and that she and her son had to sleep in jackets. The Tenant says that the Landlord did arrange for someone to attend the rental unit but that they did not repair the issue, with the heat improving around February 20, 2025 once it warmed up outside.

D.T. confirmed that the Tenant reported issues with heat in the rental unit, though says she was given a space heater shortly afterwards and that a contractor attended to ensure the heating was working properly. I am told that the heat to the rental unit is provided by baseboard radiators fed with hot water from a centralized boiler providing heat to the entire building. D.T. says that the contractor inspected the system and found no issues with it. The Landlord's agents argue that no other rental unit in the building had similar complaints with the heat, which would be expected

On the evidence before me, I find that the Tenant has failed to establish that the Landlord breached its obligation to maintain and repair the rental unit under s. 32(1) of the *Act*. Though I accept the Tenant that it was cold in February 2025, I also accept that the Landlord had a professional attend to ensure the heating system was in working order. I accept that the heating system was in working order, as confirmed upon the inspection. Further, I find it unlikely that the Tenant's rental unit would be sole unit affected by a heating issue considering there is a centralized heating system. I find it

more likely than not that there was an issue with the setting of the heat, though in any event the problem was mitigated by use of a space heater.

Accordingly, I dismiss the Tenant's claim for half a month's rent in February 2025 based on loss of heat, without leave to reapply.

### Pest and Rodent Issue

The Tenant asserts that she had been dealing with ants in her rental unit for long stretches during her tenancy. She says that this was the result of small holes in the rental unit permitting them access. The Tenant also says that there was evidence of rodent activity in the rental unit, which she was unaddressed by the Landlord.

D.T. confirms that the Tenant reported these issues, but that the Tenant was provided with traps for both the ants and the rodents. I am also told by D.T. that the Landlord has a pest control contractor on retainer and that they periodically inspect the rental unit for rodent access points, which are blocked off when discovered. He says that he provided the traps to the Tenant after consulting with the contractor.

It was argued by the Landlord's agents that part of the issue may have been the Tenant's dog, or more precisely, the dog food that acted as an attractant.

Pest and rodent issues in rental units is something of a shared responsibility between landlords and tenants. To be clear, landlords bear responsibility under s. 32(1) of the *Act* to ensure points of access are closed and that effective bait and traps are set as necessary. However, under s. 32(2) of the *Act*, tenants must maintain reasonable cleanliness and sanitary standards, which reflects a tenant's need to keep their rental unit reasonable free from attractants to the pests.

In this case, I find that I have insufficient evidence to support that the Landlord is in breach of its obligation under s. 32(1) of the *Act*. I accept that it has a pest control contractor on retainer, which is indicative of proactive steps taken under the Landlord's obligations under s. 32(1) of the *Act*. Other than providing traps to the Tenant, which I accept occurred, and securing access points to the extent possible, I find that there is little else the Landlord can reasonably do to prevent access to the rental unit to rodents or insects. I find it likely that the Tenant's rental unit was predisposed to issues of this nature considering it is on the ground floor, which was likely caused in part by the Tenant leaving pet food outside, which is an attractant to certain ants and to rodents as well.

Considering this, I find that the Tenant is not entitled to compensation of \$300.00 for the ant and rodent issues and dismiss her claim for this relief, without leave to reapply.

**3) Is the Landlord entitled to retain the Tenant's security deposit and pet damage deposit, or should the deposits be returned to the Tenant?**

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.

The Tenant's notice of June 30, 2025 contains the Tenant's forwarding address, such that I find that the Landlord received the Tenant's forwarding address before the tenancy ended on July 31, 2025 when possession was turned back to the Landlord. This means that under s. 38(1) of the *Act*, the Landlord had 15 days from July 31, 2025 to file an application claiming against the deposit. However, the Landlord filed this application on October 1, 2025, well beyond that deadline.

A.M. says that the Landlord had asked the Tenant if it could keep the security deposit and pet damage deposit for lost rent in August 2025, but that she never agreed to doing so. The Tenant was under no obligation to do so and the Landlord's relief, under the circumstances, was to file an application. Again, it did so well beyond the deadline imposed by s. 38(1) of the *Act*.

I would further note that the term "pet damage deposit" is defined under s. 1 of the *Act* as "security for damage to residential property caused by a pet". Simply put, the claim for lost rental income for August 2025 is not damage caused by the Tenant's pet, such that the Landlord had no right to retain it at all beyond 15 days from July 31, 2025 absent the Tenant's consent, which I accept was not given.

Under s. 38(6) of the *Act*, should a landlord fail to return the deposits or fail to file a claim within the 15-day window, or that their right to claim against the deposits has been extinguished, then they must return double the deposits to the tenant. I find s. 38(6) of the *Act* has been triggered such that the Tenant is entitled to the double return of her security deposit and pet damage deposit.

The Tenant is also entitled to interest on her deposits under s. 38(1)(c) of the *Act*. In this case, interest owed is \$23.62. I have determined this amount by use of the Residential Tenancy Branch's deposit interest calculator, with interest applied during the entire period the Landlord held the deposits in trust, being from its receipt on December 15, 2024 as noted in the tenancy agreement until the date of this decision when it was released.

Accounting for this, I direct that the Landlord retain the \$2,195.00 from the deposits it holds and order that it return \$2,218.62 to the Tenant, representing the balance from the doubled deposit with interest  $((\$1,097.50 \times 2) + (\$1,097.50 \times 2) + \$23.62) - \$2,195.00$ .

**4) Is either side entitled to their filing fee?**

I find that both sides had success on their respective claims and that they are both entitled to their filing fees. However, considering this both orders net each other out such that it does not affect the final monetary order.

**Conclusion**

I grant the Landlord \$2,195.00 in compensation for lost rental income.

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

I find that the Tenant is entitled to the double return of her security deposit and pet damage deposit. Accounting for the amount awarded to the Landlord, I order that the Landlord pay \$2,218.62 to the Tenant for the balance of the deposits owed, with interest.

I grant both sides their \$100.00 filing fee, which net each other out and result in no change in the amount awarded to the Tenant.

In short, I order under ss. 38 and 67 of the *Act* that the Landlord pay **\$2,218.62** to the Tenant.

The Tenant must serve the monetary order on the Landlord 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: January 5, 2026

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Residential Tenancy Branch