

DECISION

Introduction

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

- compensation for monetary loss or other money owed;
- authorization to retain all or a portion of the tenant's security deposit and/or pet damage deposit in partial satisfaction of money owed; and
- recovery of the filing fee.

This hearing also dealt with the tenant's Application under the Act, as well as an amendment to the Application (Amendment) for:

- compensation for monetary loss or other money owed;
- recovery of all, some, or double the amount of their security deposit and/or pet damage deposit; and
- recovery of the filing fee.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged service of the Proceeding Packages and raised no service concerns. After initially denying receipt of the tenant's Amendment, the landlord also acknowledged service. As a result, I found these things sufficiently served for the purposes of the Act and Residential Tenancy Branch Rules of Procedure (Rules). The hearing of both Applications and the tenant's Amendment therefore proceeded as scheduled.

Service of Evidence

The tenant acknowledged receipt of the documentary evidence before me from the landlord and raised no service concerns. As a result, I found the documentary evidence before me from the landlord sufficiently served for the purposes of the Act and Rules. I therefore accepted it for consideration.

The landlord denied receipt of the documentary evidence before me from the tenant. The tenant acknowledged that they never served their evidence on the landlord and only provided the landlord with proof that this evidence had been provided to the Residential Tenancy Branch (Branch).

The ability to know the case against you so that you may prepare an adequate defense is fundamental to the dispute resolution process. As a result, the Rules require that the parties exchange their evidence in advance of the hearing. As the landlord filed their Application first, on October 28, 2025, their Application is the primary Application. The tenant's Application, which was filed on November 5, 2025, is therefore a Cross-Application. Pursuant to rule 3.3 of the Rules, the tenant was required to submit evidence in support of their Cross-Application at the time it was filed, or within three days of making the Cross-Application. They were also required to serve this evidence on the landlord at the same time as their Proceeding Package.

Section 59(3) of the Act and rule 3.1 of the Rules require that the Proceeding Package be served within three days of being made available to the party by the Branch. The Branch provided the tenant with the Proceeding Package for their Cross-Application by email on November 6, 2025. As a result, I find that the tenant was therefore required to serve the landlord with the evidence associated with their Cross-Application by November 9, 2025.

Further to the above, rule 3.14 requires that any evidence not submitted by an applicant in support of their Application at the time the Application is filed, be received by the other party not less than 14 days before the hearing. Under rule 3.15 of the Rules respondents to another person's Application must ensure that their evidence in response to the other person's Application is received by that person not less than seven days before the hearing. As a result, I find that even if rule 3.3 of the Rules did not apply here, which it does, the tenant would nevertheless have been required to ensure that the landlord received the evidence relating to the tenant's Application by January 12, 2026, 14 days before the hearing. Any evidence they intended to rely on in response to the landlord's Application must have been received by the landlord not later than January 19, 2026, seven days before the hearing.

The tenant did not comply with any of the evidence service deadlines set out above. In fact, they did not provide the landlord with copies of their evidence at all. As a result, the landlord did not have the benefit of reviewing this evidence before the hearing. They also did not have the ability to submit evidence in response for my consideration. As the tenant's Application was filed more than two months prior to the hearing, I find that they had sufficient time to affect service. There is also no evidence before me that the tenant was prevented from serving their evidence on the landlord due to unforeseen circumstances or things beyond their control, such as hospitalization or a mental or physical disability. As a result, and as this hearing was set to deal with both Applications, I found that it would be unfair to the landlord to grant an adjournment, as the landlord had served their evidence as required and had come to the hearing prepared to be heard on the matters set out in both Applications and the tenant's Amendment.

As a result of the above, I therefore excluded the documentary evidence before me from the tenant from consideration. Although the landlord asked that the tenant's Application and Amendment also be dismissed as a result, this request was denied. The tenant was

present at the hearing and therefore capable of providing affirmed testimony in support of their Application and Amendment, and testimony is a form of evidence. They were also entitled to call witnesses, should they wish to do so, and make arguments and submissions. As a result, I found no reason to dismiss their Application and Amendment on the sole basis that their documentary evidence had been excluded.

Preliminary Matters

In the Application the landlord sought \$35,000.00 in compensation for monetary loss or other money owed. When asked in the Application to provide a complete list of the items they were requesting compensation for as part of this amount, the landlord wrote:

Amount requested: \$35,000.00

Provide a complete list of the items you are requesting compensation for:

The tenant entered into a legally binding contract which they breached and therefore this amount is the 3 years rent plus the agent fee

Although the landlord later submitted documentary evidence in relation to other things, such as bylaw fines, these were not claimed for in the Application and no Amendment was filed. As a result, I have only considered the landlord's claims related to lost rent and relisting/agent fees under the claim for compensation for monetary loss or other money owed.

Issues to be Decided

Is the landlord entitled to the compensation sought for monetary loss or other money owed?

Is the tenant entitled to the compensation sought for monetary loss or other money owed?

Who is entitled to retention or recovery of the deposits?

Are the parties entitled to recover their respective filing fees?

Background and Evidence

The tenancy agreement before me was signed electronically by the tenant on September 29, 2025, and the landlord on October 1, 2025. It states that the fixed term tenancy commenced on October 15, 2025, at a monthly rent amount of \$2,500.00. Rent is due on the first day of each month under the agreement. The fixed term was set to end on October 31, 2028, after which time the tenancy could continue month-to-month.

Although the tenant denied awareness of the three year fixed term at the time of entering into the tenancy agreement, the landlord and Agent stated that it was the tenant who proposed this length. Regardless, the tenant acknowledged at the hearing that they had signed the tenancy agreement before me as written. The parties agreed

that both a security deposit and a pet damage deposit were required in the amount of \$1,250.00 each, both of which were paid on approximately September 26, 2025. The tenant subsequently paid half a month of rent for October 2025.

The parties agreed that a move-in condition inspection and report were completed on October 15, 2025, a copy of which was submitted for my consideration by the landlord. The only deficiency listed is that a bedroom closet needs adjustment. Check marks, which indicate satisfactory condition, were used throughout the report. The tenant checked the box and signed their name indicating that the report fairly represents the condition of the rental unit at the start of the tenancy. The tenant was then provided with the keys and took possession of the rental unit on October 15, 2025, as scheduled.

Despite the above, the tenant never moved into the rental unit, and gave written notice the following day, October 16, 2025, that they would not be moving in. They also provided a forwarding address and returned the keys. At the hearing, the tenant stated that the rental unit was dirty, and that there were both live and dead roaches. They stated that they were uncomfortable during the condition inspection and did not know that they could raise issues or refuse to sign it. They stated that they sent an email to the landlord on October 15, 2025, requesting a cleaner and pest control, which the landlord "ignored for hours". They subsequently sent another email requesting compensation.

The landlord and Agent stated that they hired a company to rent the unit, and that two employees from that company completed the condition inspection and report and that they were told it went well. A.P. stated that at midnight they received an email from the tenant requesting cleaning and pest control, which was responded to immediately. They stated that although the rental unit had been professionally cleaned prior to the start of the tenancy, they agreed to have it re-cleaned and inspected by a pest-control company on the 16th. They stated that the cleaners were scheduled to attend at 8:00 AM and the pest control company was scheduled to attend at 9:00 AM.

The tenant stated that they did not stay at the rental unit on the night of the 15th, and when they returned the next morning, the cleaners were not there. Although they agreed that the pest control company arrived at 9:20 AM, they stated that they did not seem professional. The tenant stated that as the rental unit was not clean, not safe, and not habitable, they provided the landlord with written notice that they would not be moving in, and their forwarding address. They also returned the keys.

The landlord acknowledged that the cleaners and pest control company were late, but stated that the pest control company is certified and that all chemicals used are completely non-toxic. They submitted documentation from the pest control company in support of this. They stated that they got the tenant a gift basket as an apology, and advised them that they would provide a rent reduction, and even arranged for re-cleaning, but the tenant refused to move in or continue the tenancy.

The landlord stated that they paid a company \$1,225.00 to re-rent the unit, and ultimately secured new tenants for November 1, 2025. The new tenancy agreement was for less rent (\$2,450.00) and the term was only one year. They accused the tenant of causing the end of this tenancy as well as difficulty re-renting it thereafter due to a campaign of online slander. Correspondence from the new tenants regarding the ending of their tenancy was submitted, as well as evidence in support of their claim that the tenant was making many posts online speaking negatively about the landlord and the rental unit. The tenant denied any responsibility for lost rent or the ending of the subsequent tenancy agreement entered into by the new tenants. The parties agreed that as the tenant never moved into the rental unit, no move-out condition inspection was scheduled or completed.

The landlord sought recovery of lost rent over the balance of the tenant's fixed term, recovery of the \$1,225.00 paid to agents to re-rent the unit, and authority to retain the deposits towards all amounts owed. The tenant sought the return of their deposits, or double their amounts, and interest, plus compensation in the amount of \$2,500.00 to cover the deposit paid for their new rental unit. Both parties sought recovery of their filing fees.

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.

Is the landlord entitled to the compensation sought for monetary loss or other money owed?

I am satisfied based on the tenancy agreement before me from the landlord and the testimony of the parties at the hearing, that the tenant signed a three year fixed term tenancy agreement on September 29, 2025. In this agreement the tenant agreed to pay \$2,500.00 in rent on the first day of each month. The term of this agreement was October 15, 2025 – October 31, 2028. Although the tenant denied knowledge of the three year term at the time they signed the agreement, they nevertheless signed it and this term is very clearly laid out. As a result, I find the tenant bound by this term.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There are six situations when a tenant may deduct money from the rent:

- the tenant has at the time rent is withheld or deducted, an arbitrator's decision allowing the deduction;
- the landlord illegally increases the rent, in which case the illegal rent increase amount may be withheld;

- the landlord has overcharged for a security or pet damage deposit, in which case the tenant may deduct the amount overpaid from their rent;
- the landlord refuses the tenant's written request for reimbursement of emergency repairs completed and invoiced in accordance with section 33 of the Act;
- the tenant has at the time rent is withheld or deducted, the landlord's written permission allowing the rent reduction; or
- the tenant was served with a notice to end tenancy by the landlord that includes related compensation by way of a rent reduction, such as a Two Month Notice to End Tenancy for Landlord's Use of Property.

As there is no evidence before me that the tenant had any of the above noted rights under the Act to deduct or reduce rent, I find that they did not.

A fixed term tenancy may only be lawfully and unilaterally ended by a tenant under sections 45(2) and 45(3) of the Act. Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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. As a result, I find that the earliest date that the tenant could have unilaterally ended their tenancy under section 45(2) of the Act was October 31, 2025.

Although a tenant may end a tenancy under section 45(3) of the Act for breach of a material term of the tenancy agreement by the landlord, there is no evidence before me that there were any material terms in the tenancy agreement, or that any material terms were breached by the landlord. Even if I were satisfied that the landlord had breached a material term of the tenancy agreement, which I am not, there is no evidence that the tenant issued a breach letter to the landlord in compliance with Residential Tenancy Policy Guideline (Guideline) #8, section F, prior to issuing their notice to end tenancy. As a result, I find that the tenant did not properly end their tenancy on October 16, 2025, under section 45(3) of the Act.

Based on the above, I find that the tenant breached the Act and their tenancy agreement when they improperly ended their tenancy on October 16, 2025, without complying with either section 45(2) or 45(3) of the Act. I make this finding even though the tenant never moved into the rental unit, as they took possession on October 15, 2025. In any event, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit, as set out under section 16 of the Act. So even if the tenant had not taken possession, they nevertheless would have been required to comply with either section 45(2) or 45(3) of the Act if they wanted to lawfully end their tenancy without the landlord's mutual agreement.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the

other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

I am satisfied that the landlord suffered a loss of rent as a direct result of the above noted breach of the Act and tenancy agreement by the tenant. I am also satisfied that the landlord acted reasonably to mitigate any loss of rent suffered by them, as well as reduce the tenant's financial obligations over the balance of the fixed term, by expediently hiring a company to advertise and show the rental unit. Although this resulted in the commencement of a new tenancy on November 1, 2025, that agreement was for \$50.00 less per month. It also cost the landlord \$1,225.00 to employ the services of this company. As a result, I grant the landlord recovery of the \$50.00 difference between the amount of rent paid by the new tenants in November and the amount of rent due by the tenant under their tenancy agreement for that same month. This is in line with Guideline #3. I also grant the landlord recovery of the \$1,225.00 fee they paid to the agency to advertise, show, and re-rent the unit early.

Although the landlord claimed that the tenant also caused the end of the new tenancy due to slanderous comments they made online about the landlord and the rental unit, they have failed to satisfy me of this. Furthermore, even if the new tenants had ended their tenancy because of the tenant's comments online, that would not have constituted a lawful reason under the Act to end the tenancy. This tenant cannot therefore be held responsible for breaches under the Act by different tenants subject to a different tenancy agreement. If the landlord suffered losses because of the premature ending of the subsequent tenancy, those claims need to be brought against the tenants subject to that agreement.

While a landlord can claim loss over the balance of a fixed term when a tenant has prematurely and improperly ended a tenancy, they must prove their loss. Although the tenant may have theoretically been responsible for any lost rent between the end of the tenancy that commenced November 1, 2025, had that tenancy been properly and lawfully ended by those tenants, it was not. There is also no evidence before me regarding how much rent loss may still occur, if any, over the remaining balance of the tenant's three year fixed term. The landlord may potentially even obtain more rent over the remaining balance of the term than the tenant would have owed and paid, in which case, they would not be entitled to further loss.

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. Based on the above, I find that the landlord has satisfied me of only \$1,275.00 in monetary loss for rent and fees. I therefore grant them recovery of this amount. Any of their remaining claims are either related to the alleged improper ending of the subsequent tenancy by the tenants subject to that tenancy agreement, or are purely speculative in nature. As a result, the remaining claims for rent loss related to this tenancy are dismissed without leave to reapply.

Is the tenant entitled to the compensation sought for monetary loss or other money owed?

Although the tenant sought recovery of the \$2,500.00 deposit paid for their new rental unit, I dismiss this claim without leave to reapply for the following reasons. First, this is not a true “loss” suffered by the tenant, as deposits are recoverable amounts. They are held in trust during a tenancy and even accrue interest as applicable. At the end of the tenancy the tenant is therefore entitled to the return of this amount, and any accrued interest, provided they have not breached the Act resulting in extinguishment of their right to its return, have no outstanding debts to the landlord at the end of their tenancy, and leave the rental unit in the required state of decoration and repair.

Second, the tenant’s need to pay a security deposit elsewhere is the direct result of the ending of the tenancy, which I have already found was a breach of the Act and tenancy agreement by the tenant. As a result, even if the amount sought was a loss suffered by the tenant, which it is not, it would nevertheless be unrecoverable by the tenant from the landlord. The tenant cannot breach the Act and tenancy agreement, and then seek reimbursement of the costs that flow from those breaches.

Finally, although the tenant made egregious allegations against the landlord regarding the state of the rental unit, which was their reason for ending the tenancy, they failed to satisfy me that the allegations made were true. Evidence before me from the landlord, such as receipts for cleaning both before and after the tenancy, the move-in condition inspection report, and pest control documents also contradict the tenant’s version of events, which were entirely unsupported by documentary or other corroboratory evidence.

Who is entitled to retention or recovery of the deposits?

Based on the documentary evidence before me, and the testimony of the parties, I am satisfied that the parties complied with the Act and regulation at the start of the tenancy in relation to the condition inspection and the condition inspection report. As a result, I find that neither party extinguished their rights in relation to the security deposit under section 24 of the Act. However, I do not make the same finding with regards to the ending of the tenancy.

The day after taking possession of the rental unit, the tenant simply advised the landlord that they were not moving in, and returned the keys. I have also already found above that the tenant was not entitled to do so under the Act. By doing so anyways, I find that the tenant abandoned the rental unit. As a result, I find that the landlord did not extinguish their right to claim against the deposits under section 36(2) of the Act by failing to:

- offer the tenant at least two opportunities for the move out inspection;
- complete a condition inspection and report in the tenant’s absence; or

- provide the tenant with a copy of a move out condition inspection report in compliance with the regulation.

As abandonment is not listed under section 36(1) of the Act as a reason for extinguishment by a tenant to their right to the return of their deposits, I also find that extinguishment under section 36(1) of the Act does not apply.

As the tenancy ended on October 16, 2025, and the tenant provided their forwarding address to the landlord on this same day, the landlord therefore had until October 31, 2025, to either return the deposits to the tenant or file a claim against them, if permissible, as set out in section 38(1) of the Act. Although the landlord collected both a pet damage deposit and a security deposit from the tenant, pet damage deposits may only be claimed against in an Application for damage caused by a pet. This is supported by the definition of a “pet damage deposit” under section 1 of the Act which states that a pet damage deposit is money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet. This is also clearly set out in Guideline #31.

None of the landlord’s claims against the deposits relate to pet damage, and neither the tenant nor their pet ever moved into the rental unit. As a result, I find that the landlord was not entitled to retain and claim against the pet damage deposit and was therefore required to return it to the tenant, with any interest accrued, by October 31, 2025. As they did not, I find that the doubling provision set out under section 38(6) of the Act applies, but only in relation to the pet damage deposit. The landlord remained entitled to retain and claim against the security deposit in the Application, provided they complied with section 38(1) of the Act in doing so. As the Application was filed on October 28, 2025, I am satisfied that they did.

The landlord currently holds the following amounts in trust:

- security deposit: \$1,253.16 (including \$3.16 in interest)
- pet damage deposit: \$1,253.16 (including \$3.16 in interest)

The tenant is entitled to \$2,503.16 for double the amount of their pet damage deposit, plus interest. The landlord is entitled to \$1,275.00 in compensation for lost rent and fees. When I offset these amounts against one another, I find that the tenant is still owed \$1,228.16 from the landlord. When I add this to the security deposit amount still retained by the landlord, which must be returned to the tenant, I find that the tenant is entitled to \$2,481.32. I therefore award the tenant a Monetary Order in this amount under section 67 of the Act.

Are the parties entitled to recover their respective filing fees?

Recovery of the filing fee is at my discretion. As both parties were only partially successful against one another, I decline to award recovery of either filing fee under section 72(1) of the Act. I therefore dismiss these claims without leave to reapply.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a Monetary Order in the amount of **\$2,481.31**. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** by the tenant as soon as possible. Should the landlord fail to comply with this Order, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than \$35,000.00.

The remaining claims by both parties are dismissed without leave to reapply.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if I have erred in my calculation of time and this decision and the associated Order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: February 27, 2026

Residential Tenancy Branch