

DECISION

Introduction

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

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order from arbitrator to determine whether the Residential Tenancy Branch has jurisdiction over the tenancy under sections 2 and 4 of the Act

The hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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

Tenant A.M., Tenant L.R. attended the hearing for the Tenant.

Landlord S.S., Landlord M.S., Landlord OTH.C.P. attended the hearing for the Landlord.

Issues to be Decided

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

At the initial December 2, 2025, hearing concerns regarding the Tenant's evidence package were noted by the Landlord. However, at the reconvened hearing both parties acknowledged that evidence had been received and that any issues of concern had been resolved.

Preliminary Matters

The Tenant's matter was initially scheduled for December 2, 2025, however, was adjourned to hear both matters together as they were related. The matters reconvened on January 16, 2026.

At the outset of the hearing, the Tenant's application for an order requesting that the arbitrator determine whether the Residential Tenancy Branch had jurisdiction over the tenancy under sections 2 and 4 of the Act was discussed. It was determined that this issue had been selected in error and that the Tenant was in fact seeking additional compensation. Both parties confirmed that there is no dispute that the tenancy falls under the jurisdiction of the Act, and there is no evidence before me to suggest otherwise. Accordingly, the parties agreed that the request for compensation would be considered as part of the Tenant's claim for compensation. The application has therefore been amended to reflect the correct issues.

Rule of Procedure 4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence on the Dispute Access site or with the Residential Tenancy Branch directly or through a Service BC Office. An amendment may add to, alter, or remove claims made in the original application.

It is noted that within the Tenant's application is a request for increased compensation. I am unable to locate any application to amend the application, therefore the amount considered is limited to the amounts listed in the original application.

The Landlord submitted an amended Monetary Order Worksheet increasing their claim for compensation related to damages from \$14,990.00 to \$15,129.58, reflecting the inclusion on an extra expense for a new dryer top. I am unable to locate any request to amend the application, therefore the inclusion of the dryer top will not be considered in this application.

Compensation Requested

On November 7, 2025, the Tenant filed a dispute resolution application requesting compensation in the amount of \$23,998.86, with the following summary:

- Compensation for hardship of living in shelter and bus
 - \$3654.00
- Additional Transportation costs from shelter
 - \$1800.00
- Movers to transport items to storage
 - \$3000.00
- Complete Displacement of Family and Father
 - \$3500.00
- Breach of Quiet Enjoyment
 - \$1,500.00
- Privacy violation from being seen nude
 - \$1500.00
- Privacy Violation:
 - \$1,500.00
- Children's Emotional Hardship
 - \$1,200.00
- Child Support
 - \$300.00
- Extra costs (pool, meals, gas)
 - \$1284.86
- Hotel-Equivalent Benchmark (17 nights @ \$140.00)
 - \$2380.00

On November 13, 2025, the Landlord filed an application for dispute resolution, requesting the following compensation:

- Unpaid rent for November 2025
- Damages
 - Floor replacement
 - \$8,060.39
 - Painting
 - \$6,825.00

Background and Evidence

The tenancy began in August 2025 at a monthly rent of \$3,300.00, due on the first day of each month. A combined security and pet deposit of \$900.00 was paid by the Tenant and remains held by the Landlord. No move-in condition inspection was completed at the start of the tenancy; however, a move-out condition inspection was conducted at the end of December 2025. A physical forwarding address was not provided at the end of the tenancy, though an email address was provided by the Tenant's for communication and return of any funds.

The Tenancy ended as a result of a major sewage issue with the rental property, as a result there are several dates that could be considered the end of tenancy, a timeline of events is included at the bottom of this section.

It is undisputed that the Tenant ceased residing in the rental unit on November 2, 2025; however, their belongings remained in the unit until mid-December, with full removal occurring no later than December 19, 2025.

Both parties acknowledged that a sewage failure occurred in October 2025 and that a licensed plumber attended the rental unit on or about October 22–23, 2025. Exterior septic repairs were completed near the end of December 2025, while interior repairs remain ongoing.

The Landlord submitted that the sewage failure was first reported several days after it began and that plumbers were contacted immediately, though none were available until later that week. Interim attempts to address the blockage were described. A professional inspection determined that the cause was a dropped pipe unrelated to maintenance neglect. The Landlord further stated that compensation equal to the full rental value of the affected period was offered, and that toilets and water continued to be used despite verbal requests to refrain, contributing to interior damage. The Tenant submitted that no alternative accommodation was offered and that makeshift sanitation methods and community facilities were relied upon. The Tenant further submits that it was the Landlord's attempts to address the issues that caused interior damage to both the rental unit and their personal belongings.

Upon inspection the licensed plumber later identified significant issues with the septic system. The Tenant asserts these issues were caused by lack of maintenance, while the Landlord disputed this and maintained that professionals attributed the failure to external factors. The Landlord submitted a copy of an email from the Plumber in which they confirm the cause to be from shifting ground support under the pipes causing them to collapse.

The Tenant submits that on October 24, 2025, the Landlord entered the rental unit without providing proper 24 hour notice and that as a result he and the insurance agent saw her nude. The Landlord disputed allegations of unauthorized entry, stating that permission was given by phone the day before, entry occurred in the early afternoon with knocking and verbal announcements, and that departure occurred immediately.

A mutual agreement to end the tenancy was presented by the Landlord on November 1, 2025, but was not accepted by the Tenant. No formal notice to end the tenancy was issued. The Tenant stated the unit was vacated the day after the mutual agreement was presented and that family members had to divide between temporary shelter and a vehicle due to limited housing options.

The Tenant submitted extensive amounts of evidence, including online legal opinions, affidavits, impact statements, emails, photographs, notes, and summaries, supporting allegations of loss, hardship, privacy breach, and habitability concerns.

The Tenant submits that cleaning was performed without access to running water and that subsequent contractor traffic caused additional soiling of the flooring. Several wall markings and holes were claimed to pre-exist the tenancy.

The Landlord submitted an end of tenancy inspection from the previous tenancy which noted several scuffmarks and defects in the walls. The Landlord states that the rental unit was painted prior to the tenancy and submitted an advertisement for the property which indicated so. The Tenants dispute causing significant damages or marks on the walls.

Regarding damages, the Landlord asserted that carpets, walls, and the dryer top were left damaged or unclean, with numerous holes, scratches, and soiling not present prior to the tenancy. Interior repairs were delayed because belongings remained in the unit until mid-December. The unit had been painted and cleaned shortly prior to the tenancy.

The Landlord claimed unpaid rent for November on the basis that proper notice had not been provided and that the unit continued to be used as storage.

No forwarding address was properly provided in writing.

Key timeline events include:

- **October 17, 2025:** Tenant emailed the Landlord reporting toilets backing up into tubs, inquiring when the septic was last pumped, and stating they planned to rent a snake that evening.
- **October 23:** Landlord emailed insurance, forwarding plumber photos showing possible pipe shift. Insurance responded that the property was a Category 3 sewer contamination biohazard and tenants must vacate before emergency work commenced.
- **October 24:** Tenant alleged Landlords entered without legally required notice, exposing them while bathing.
- **October 27:** Tenant requested updates on repair timelines.
- **October 30:** Repair contractor confirmed sewage seepage required tenants to vacate for remediation.
- **November 1:** Landlord provided a "Tenancy Agreement Frustrated" form documenting uninhabitability due to the dropped pipe; Tenant declined to sign.
- **November 3:** Landlord offered reimbursement of \$106.45 per day for water loss from October 15–31, contingent on moving quotes; Tenant declined.
- **November 6:** Tenant sent an email stating they were ending the tenancy
- **November 7:** Tenant stated the suite was vacant.
- **November 26:** Plumber report confirmed sewer line separation was likely caused by ground settling, not maintenance neglect.

- **December 26:** Landlord contacted Tenant to schedule inspection; both agreed to December 30 at 4:00 PM.
- **December 30:** Landlord completed move-out condition inspection; Tenant submitted extensive disagreement comments.
- **December 26, 2025:** Exterior repairs to sewage system completed.
- **December 19, 2025:** all Tenant's belongings removed from rental property.

Analysis

Frustration of Tenancy

As per section 62 of the Act, the director has authority to resolve under this Part
(a) disputes in relation to which the director has accepted an application for dispute resolution, and
(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

In consideration of the dispute I find that it is necessary to make a determination with regard to the nature of the end of tenancy.

Section 44(1)(e) of the Act provides that a tenancy ends if the tenancy agreement is frustrated. As set out in Policy Guideline 34, frustration occurs where, without the fault of either party, an unforeseeable event so radically changes the circumstances of the contract that it becomes impossible to perform as originally intended. The threshold for frustration is high: the event must fundamentally alter the nature, purpose, and effect of the agreement. A contract will not be frustrated if the event was within the reasonable contemplation of the parties at the time they entered into the agreement, nor can a party rely on frustration where the situation arose from their own deliberate or negligent conduct.

In the present circumstances, the evidence establishes that the rental unit was not fit for habitation. The photographs depicting raw sewage inside the residence, together with the length of time required to remedy the underlying issue, demonstrate a serious and fundamental interference with the intended use of the premises. Residential tenancy agreements are premised on the provision of safe and habitable accommodation. Where the premises become uninhabitable due to conditions of this severity, the essential purpose of the tenancy is defeated. The situation was not shown to be caused by the deliberate or negligent act of either party, nor was it a circumstance reasonably contemplated at the time the agreement was formed.

Accordingly, I find that the tenancy was frustrated as of November 2, 2025, the date the Tenants vacated the rental unit.

Although the Tenants' personal belongings remained on the property after that date, this was a consequence of the emergency conditions that required them to seek alternative

shelter. Their continued storage of belongings in the unit did not constitute continued occupation for residential purposes, but rather was incidental to the unforeseen circumstances. As such, the tenancy is properly considered to have ended on November 2, 2025, pursuant to section 44(1)(e) of the Act.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

As indicated above, I have determined that the tenancy was frustrated as of November 2, 2025. In reaching this conclusion, I have considered that frustration applies only where the supervening event is not attributable to the actions or negligence of either party. Although the Tenant submits that the plumbing issues arose due to neglect on the part of the Landlord, there is insufficient evidence to support that allegation. On the contrary, the evidence before me includes a professional opinion indicating that the plumbing failure resulted from natural ground movement rather than any failure to maintain or repair the property.

In the absence of persuasive evidence establishing neglect or breach, I am unable to find that the Landlord failed to comply with the Act, the Regulation, or the terms of the tenancy agreement. The circumstances giving rise to the uninhabitable condition were unforeseen and not caused by either party. Accordingly, while the tenancy is found to have been frustrated and therefore ended, there has been no breach on the part of the Landlord. As a result, the Tenant is not entitled to compensation for expenses associated with vacating the rental unit. The Tenant's claim for the following amounts is dismissed, without leave to reapply:

- Compensation for hardship of living in shelter and bus
 - \$3654.00
- Additional Transportation costs from shelter
 - \$1800.00
- Movers to transport items to storage
 - \$3000.00
- Complete Displacement of Family and Father
 - \$3500.00
- Breach of Quiet Enjoyment
 - \$1,500.00
- Children's Emotional Hardship
 - \$1,200.00
- Child Support

- \$300.00
- Extra costs (pool, meals, gas)
 - \$1284.86
- Hotel-Equivalent Benchmark (17 nights @ \$140.00)
 - \$2380.00

Landlord Entry

The Tenant submits that on October 24, 2025, the Landlord entered the rental unit without notice and saw her nude.

The Landlord disputes this stating that he had verbally informed the Tenants the previous day that he would be attending with a representative from the insurance company.

Section 29 of the Act provides the following guidance with regard to a Landlord's entry in to a rental property:

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Given that the sewage issues had been ongoing for several days and were already assessed, I find that the entry would not be classified as falling under section 29(f).

The Tenant says they did not verbally agree that the Landlord could access the unit. I find on a balance of probabilities that it is unlikely that the Tenant would have chosen to be undressed knowing that the Landlord was attending; therefore, I find that it is unlikely that the parties had agreed upon a time for the Landlord to attend on the 24th of October. It is undisputed that written notice was not given in accordance of section 29(b). As such I find that the Landlord breached section 29 of the Act on October 24, 2025.

The Tenant is requesting a significant amount of compensation for this breach. I find the Tenant did not establish that the loss of privacy resulted in the claimed amount loss.

Nominal damages are a minimal award which can be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In consideration of the circumstances, I grant the Tenant \$100.00 in nominal damages in relation to the October 24, 2025, breach of privacy.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

As per section 92 of the Act, the Frustrated Tenancy Act applies and the doctrine of frustration of contract applies to tenancy agreements. Section 5 of the Frustrated Tenancy Act provides that if a tenancy is frustrated halfway through a month, and a tenant has prepaid the full month's rent, the tenant is entitled to restitution for the unused portion of the month. In other words, the landlord cannot retain rent for a period during which the premises can no longer be occupied due to the frustrating event. The tenant remains liable only for the portion of the rent corresponding to the period before frustration, since that benefit (the right to occupy the premises) has already been received.

As indicated above, I find that the tenancy was frustrated as of November 2, 2025. Although this leaves the Tenant owing full rent for the day of November 1, 2025, I find that the loss of facilities due to the significant sewage issues should be considered and therefore grant a 100% rent reduction for this day in accordance with section 65 of the Act.

Overholding

Policy Guideline 3 states that a tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the Act. This includes compensation for

the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

The Landlord is claiming rent for the full month of November due to the Tenant's belongings remaining at the rental unit. The amount of \$3300.00 per month was based on full use of the rental unit and its facilities, the worth of which would reasonably be considered far more than the use of a facility for storage. The Landlord did not provide any proof that the storage of the Tenant's items resulted in a delay of repairs or services. In consideration of this I find that the Tenant did overhold for the month of November, however in consideration of the circumstances I find that the only appropriate amount to grant would be 10% of the rental rate. Therefore, I grant the Landlord \$319.00 for the storage of the Tenant's belongings for the period of November 2- 30, 2025.

For the above reasons, the Landlord is granted \$319.00 for storage fees under section 67 of the Act.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Painting

I find that the Landlord failed to establish their claim for compensation in regards to flooring and paint.

The Landlord did not complete a move-in condition inspection report and instead relied on an advertisement indicating that the rental unit had been freshly painted. The Tenants dispute that they caused any damage to the walls.

An advertisement alone is insufficient evidence of the condition of the rental unit at the start of the tenancy. The advertisement does not establish key facts such as:

- Whether the unit was professionally painted;
- Whether all necessary wall repairs were completed prior to painting;
- Whether all rooms were painted; or
- The actual condition of the walls at the commencement of the tenancy.

In the absence of a move-in condition inspection report agreed to by both parties, there is no reliable evidence establishing the original condition of the walls. Without such evidence, it is not possible to determine whether any deterioration was the result of tenant damage or pre-existing issues.

Accordingly, the Landlord's claim for wall damage is dismissed.

Flooring

The Landlord submits that the carpet was damaged beyond the point of being cleaned and required replacement.

However, the Landlord did not complete a move-in condition inspection report establishing the state of the carpets at the start of the tenancy. Without evidence of the original condition, it is not possible to determine whether any deterioration occurred during the tenancy or was pre-existing.

Further, the Landlord provided no evidence regarding the age of the carpet. The age of flooring is a significant factor in determining whether replacement is attributable to tenant damage or to normal wear and tear. Without information about the carpet's expected useful life, I cannot conclude that replacement was necessitated by tenant conduct rather than ordinary depreciation.

Additionally, there were documented sewage issues at the property, and contractors were likely entering and exiting the home between the date the Tenants vacated (November 2, 2025) and the inspection conducted on December 30, 2025. This gap in time, combined with third-party access to the unit, creates further uncertainty as to when and how any alleged damage occurred.

In the absence of a move-in condition inspection report, evidence of the carpet's age, or clear proof linking the alleged damage to the Tenants' actions or negligence, I am unable to find on a balance of probabilities that the Tenants are responsible for the claimed carpet damage.

Accordingly, the Landlord's claim for carpet replacement is dismissed.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

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

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the tenancy ended on November 2, 2025 and the Landlord made their application on November 13, 2025, I find that the Landlord made their application within 15 days.

Under Policy Guideline 17, a landlord who has lost the right to claim against the security deposit for damage to the rental unit, retains the right to file a claim against the deposit for any monies owing for other than damage to the rental unit.

In this case, since the Landlord's application includes a claim for loss of rental income filed within 15 days, I find the Landlord was authorized to retain the deposit while awaiting a decision on this claim. Therefore, the value of the deposit should not be doubled.

I authorize the Landlord to retain \$319.00 from the deposit in satisfaction of the monetary award above.

I find the Tenant is entitled to a monetary order for the return of the remainder of their deposit plus interest as calculated below. I find interest of \$3.58 accumulated on the deposit.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$ 684.58** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenant for the return of their deposit(s) from the Landlord	\$903.58
A Monetary Order for the Tenant for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$100.00
a Monetary Order for overholding under section 67 of the Act	-\$319.00
Total Amount	\$ 684.58

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(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.

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

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: February 12, 2026

Residential Tenancy Branch