

## **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
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit 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

and the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- 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 Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Landlord OTH. A.T., Landlord OTH. I.S., and Landlord OTH. D.R. attended the hearing for the Landlord.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Landlord's Proceeding Package was served in accordance with the Act. The Landlord provided Canada Post tracking numbers and receipts showing each Tenant was sent a package at the address the Tenants provided for service of documents in their Notice of Dispute Resolution Proceeding; Tenant D.C. signed for both packages. Tracking numbers are on the cover sheet.

### **Service of Evidence**

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act. The Landlord affirms their evidence was included in the Proceeding Package served to the Tenants by registered mail.

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

### Issues to be Decided

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit?

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

Is the Landlord entitled to a Monetary Order for compensation for damage or loss under the Act?

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

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

### Facts 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.

The Landlord provided a copy of a Monetary Order Worksheet (MOW) as follows:

LEASE BREAK FEE		\$500.00
RENTAL INCENTIVE	7 MONTHS - INCENTIVE	\$1,106.00
<b>Total monetary order claim</b>		<b>\$ 1,606.00</b>

They further provided a copy of the tenancy agreement. It is signed by both parties and dated January 3, 2025. It is a 12 month fixed term agreement with a February 1, 2026, start date. It states rent is \$1958.00 per month, due on the first day of each month. It further requires a \$250.00 security deposit and a \$200.00 pet damage deposit. Clause 4 of the tenancy agreement reads as follows:

However, if the Tenant terminates the tenancy in less than 12 months, \$500 + RENT CONCESSIONS (if any) will be charged by the Landlord and the Tenant will pay this amount as a service charge for tenancy change over costs, such as advertising, interviewing, administration, re-renting, for this short-term tenancy. This is not a penalty.

Rent concessions are not mentioned further in the tenancy agreement itself, but the Landlord provided a copy of a “rental incentive agreement” that states it is made in accordance with the lease described above. It is signed by both the Landlord and the Tenants and is dated January 8, 2025. It states, in part, the following:

Upon signing a 12 month lease agreement, the tenant(s) will receive a monthly rental concession in the amount of \$158.00 for the term of the lease. In addition, the tenant(s) shall receive an immediate incentive of 0.00 off the first month rent. The term of the lease is February 2025 to January 2026.

In a separate section at the bottom of the “rental incentive agreement”, below the parties’ signatures, is a box marked for “Resident Manager/Office Use Only” that states “Amount \$158.00 deducted per month to start the 1<sup>st</sup> day of February 2025.

The Landlord provided a copy of a Notice to End Tenancy the received from the Tenants on July 9, 2025, that had an August 31, 2025, effective date. The Landlord affirms they discovered on August 19, 2025, that the Tenants had removed all their belongings from the rental unit, abandoning said unit. The Landlord affirms they retook possession of the rental unit that same day, August 19, 2025.

The Landlord affirms the Tenants paid the full amount of rent, minus the \$158.00 “rent concession”, for the months of February 2025 to August 2025, inclusive.

The Landlord further affirms that they returned the full amount of the pet damage deposit but retain the full amount of the security deposit.

**Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act?**

Rule of Procedure 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Applicant has not attended, their 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.

**Is the Landlord entitled to a Monetary Order for compensation for damage or loss under the Act?**

I find the “rental incentive agreement” to be an addendum to the tenancy agreement. However, I find the portion above the parties’ signatures stating that \$0.00 incentive shall be given to the Tenants for the first month to supersede the section for “Resident Manager/Office Use Only” that states \$158.00 shall be deducted from February 2025 rent. To be clear, I find that the \$158.00 the Landlord deducted from the Tenants’ February 2025 rent was not a “rent concession” as defined in the addendum to the tenancy agreement; it was a reduction they chose to do but were not obligated to do.

Policy Guideline 4 clarifies that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find clause 4 of the tenancy agreement to be a liquidated damages clause and not a penalty. Furthermore, based on the evidence before me, on a balance of probabilities, I find the Tenant contravened section 45(2)(b) of the Act by abandoning the rental unit earlier than the date specified in the tenancy agreement. As such I find the Landlord is entitled to compensation in the amount of \$1,448.00, calculated as follows, \$500.00 + \$158.00 “rent concession”)(6 months, March to August of 2025).

For the reasons above I find the Landlord is entitled to a \$1,448.00 monetary award 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 Tenant's security deposit in partial satisfaction of the monetary award requested? Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit?**

I allow the Landlord to retain the full amount of the security deposit, plus interest, a total amount of \$252.17, in partial satisfaction of their monetary award.

I further find that, based on the evidence before me and on a balance of probabilities, that the Landlord has returned to the Tenants the entirety of their pet damage deposit.

The Tenant’s application for a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act is dismissed without leave to reapply.

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

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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

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

**Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$1,295.83** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
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	\$1,448.00
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	- \$252.17
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$1,295.83</b>

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: February 5, 2026

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Residential Tenancy Branch