

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's and Tenant's Applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- a Monetary Order for unpaid rent
- a Monetary Order for damage to the rental unit or common areas
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Tenant applied for:

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

### **Issues to be decided**

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 a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the Monetary Order requested?

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

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

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

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

## **Facts and Analysis**

This tenancy began on May 12, 2023, with a monthly rent of \$6500.00 and with a security deposit of \$3150.00.

The following sections will address the Landlord's claims, then the Tenant's claims separately, for ease of reference. Each section includes the applicant's relevant testimony and evidence, the respondent's relevant testimony or evidence in response to the claims, and the analysis and decision for each claim.

### **Landlord's Claims**

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

The Landlord claims \$6300.00 for unpaid rent due August 1, 2023.

The Tenant gave their written notice to end tenancy on July 31, 2023, by email, with an effective date of August 15, 2023. Both parties testified that the Tenant did not pay rent for August 2023. The Tenant applied a stop payment to the direct deposit for rent due August 1, 2023.

The Landlord claims the Tenant moved out on August 15, 2023. The Tenant claims they moved out on August 9, 2023. The Tenant argues they moved out because the Landlord breached a material term of the tenancy agreement, and so the Tenant was not required to pay the rent due for August 2023.

Section 26 of the Act says that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not have an Order or authorization from an arbitrator to deduct the rent. The Tenant did not pay to complete emergency repairs or have written consent from the Landlord to deduct the rent. For these reasons, I find the Tenant did not have a right under the Act to deduct the rent.

The Tenant lived in the rental unit during the month of August 2023. For this reason, I find the Tenant owed rent for that month under the tenancy agreement and the Act.

Based on the testimony of both parties, I find the Tenant did not pay the rent due August 2023.

For these reasons, I find the Landlord is entitled to a Monetary Order of \$6300.00 for unpaid rent under section 67 of the Act.

**Is the Landlord entitled to a Monetary Order for damage to the rental unit?**

The Landlord did not provide testimony about any damage to the rental unit caused by the Tenant. The Landlord mentioned scuff marks on the walls of the rental unit in their application but did not testify about this damage or provide evidence of the cost of the repair. The Tenant testified that they did not damage the rental unit.

The Landlord did not provide sufficient evidence or testimony to prove their claim for damage to the rental unit.

For these reasons, the Landlord's claim for a Monetary Order for damage to the rental unit is dismissed, with leave to re-apply. I make no finding on the merits of the matter. Leave to reapply is not an extension of any applicable time limits under the Act.

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

The Landlord claims \$350.00 for the cost to remove the security cameras that the Tenant affixed to the rental unit, change the locks to the rental unit, and remove recycling left behind by the Tenant. The Landlord provided the invoice for these services as evidence to support their claim.

The tenancy agreement addendum term 10 states that the Tenant may not affix any items to the exterior of the rental unit unless they are given written permission by the Landlord. The Landlord testified that they did not give permission to the Tenant to put up security cameras, and the Tenant failed to remove the cameras when they moved out.

The Landlord testified that the Tenant did not return the keys to the rental unit on move out, so the Landlord was required to change the locks. The Landlord testified that the Tenant left their recycling behind when they moved out. The Landlord provided a photo of the recycling as evidence to support their claim. The Tenant did not dispute these claims in their testimony.

The Landlord claims \$450.00 for cleaning of the rental unit. Both parties testified that the Tenant did not clean the rental unit when they moved out. The Landlord provided photos and the move out inspection report in support of their claims.

The Landlord claims \$300.00 for cleaning the carpets in the rental unit. Both parties testified that the Tenant did not steam clean the carpets at the end of the tenancy. The

Landlord claims \$150.00 for the cost to clean the blinds in the rental unit. Both parties testified that the Tenant did not clean the blinds at the end of the tenancy.

The Landlord claims \$78.75 for the cost to reprogram the alarm code of the rental unit. The Landlord testified that the Tenant changed the alarm code and did not provide the new code to the Landlord. The Tenant did not dispute this claim in their testimony.

The Landlord claims \$5100.00 for liquidated damages in accordance with term 3 of the tenancy agreement addendum. Both parties testified that the Tenant moved out of the rental unit before the end of their fixed term. The Tenant gave a detailed explanation about why they moved out early, which will be summarized in the Tenant's Claims section of this decision.

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the landlord must prove on a balance of probabilities that:

- 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

I find the Tenant breached the tenancy agreement by affixing security cameras to the exterior of the rental unit without the Landlord's permission. I find the Tenant breached section 37 of the Act by not returning the keys to the rental unit to the Landlord and by not removing their recycling.

The Landlord provided an invoice as proof of the cost for this service. The Landlord hired this service person to complete only necessary work, and therefore minimized their loss. For these reasons, I find the Landlord has proven their claim for \$350.00 for the cost to remove the security cameras that the Tenant affixed to the rental unit, change the locks to the rental unit, and remove recycling left behind by the Tenant.

Section 37 of the Act says that the Tenant must leave the rental unit reasonably clean when they move out at the end of the tenancy. Term 14 of the tenancy agreement addendum states that if the Tenant fails to clean the rental unit, a \$450.00 cleaning fee will be applied.

Based on the testimony of both parties, I find the Tenant breached the Act and tenancy agreement by not cleaning the rental unit at the end of the tenancy. I find the Landlord has proven their claim for the \$450.00 cleaning fee in accordance with the tenancy agreement addendum.

The Landlord did not provide any documentary evidence as proof of the cost to clean the carpets and blinds, or the cost to re-program the alarm system code. The tenancy agreement does not include a specific value for the cost to clean the carpets and blinds, or to change the alarm code. I find the Landlord has not provided sufficient evidence to prove the value of their losses. For these reasons, I find the Landlord has not proven their claims for \$300.00 to clean the carpets, \$150.00 to clean the blinds, and \$78.75 to reprogram the alarm system.

Policy guideline 4 says a liquidated damages clause is a clause which requires the tenant to pay for ending a fixed term tenancy early. The tenancy agreement was a fixed term ending May 31, 2024.

Term 3 of the tenancy agreement addendum clearly states that if the Tenant ends the fixed term tenancy before the end of the term, then they owe \$5100.00 for liquidated damages. With reference to policy guideline 4 I find the liquidated damages clause is valid and is not a penalty. I find the Tenant ended the tenancy before the end of the fixed term.

I have considered the Tenant's reasons for ending the tenancy early and find that these reasons do not invalidate the tenancy agreement nor the liquidated damages clause. For these reasons, I find the Landlord has proven their claim for liquidated damages of \$5100.00.

In total, I find the Landlord is entitled to a Monetary Order of \$5900.00 for damage or loss under section 67 of the Act.

**Is the Landlord entitled to retain the Tenant's security deposit in partial satisfaction of the Monetary Order requested?**

The Landlord completed a move in condition inspection report with the Tenant signing on May 12, 2023. The Landlord offered multiple opportunities to the Tenant to complete the move out condition inspection between August 9 to August 15, 2023. The Tenant testified that they did not participate in the move out condition inspection. The Landlord completed the move out condition inspection report on August 15, 2023, and provided a copy to the Tenant. The Tenant has not provided their forwarding address in writing to the Landlord.

The Landlord provided copies of both condition inspection reports as evidence to support their claims.

Section 38 of the Act says that within 15 days of the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must make an application for dispute resolution to claim against it. As the Tenant has not provided their forwarding address to the Landlord, I find the Landlord made their application against the Tenant's security deposit on time.

Section 72 of the Act says the tenant's security deposit may be applied to a monetary order granted to the landlord.

I have found the Landlord is entitled to Monetary Orders for unpaid rent and damage or loss under section 67 of the Act. Therefore, I find the Landlord is entitled to retain the Tenant's security deposit, with interest, in partial satisfaction of the Monetary Orders under section 72 of the Act.

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

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

**Tenant's Claims**

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

The Tenant claims \$2488.50 for moving costs, \$3360.00 for the cost to replace their bed, and \$22,000.00 for lost wages.

The Tenant testified that their quality of life at the rental unit was seriously affected by the plumbing issue. The issue was flooding sewage into the shower pan in the downstairs bathroom. The use of water in the downstairs bathroom caused this issue, all other water use in the home did not cause sewage backup. The Tenant claims that losing access to the downstairs bathroom breached a material term of the tenancy agreement, and that allowing access to repair persons and plumbers to fix this issue disrupted their quiet enjoyment of the rental unit.

The Tenant was concerned about the health and safety of their family from exposure to the sewage gasses, so they decided to move out early. The Tenant claims their \$2488.50 cost to move for these reasons and provided the U-Haul invoice as evidence to support their claim.

The Tenant testified that although no raw sewage water escaped from the shower pan in the bathroom, the sewage gases spread into the bedroom next to the downstairs bathroom and they had to replace the bed in that room for that reason. The Tenant claims \$3360.00 for the cost to replace the bed and provided the payment receipt as evidence to support their claim.

The Tenant works from home, and had their workstation set up downstairs where the sewage issue was occurring. The Tenant was unable to work for three weeks due to the sewage issue. The Tenant claims \$22,000.00 in lost wages for this period. The Tenant did not provide any documentary evidence of their lost wages.

Both parties testified that the Landlord was responsive to the plumbing issue, sending plumbers within one day of the Tenant's report about the problem on all three occasions that it occurred. On the third occasion, the Landlord asked the plumber to assess what work needed to be completed to fix the problem permanently.

The Landlord gave the Tenant a written notice for access to the rental unit to repair the plumbing on July 14, 2023, requesting access for the work to be completed July 18-19, 2023. The Landlord offered to move the Tenant's belongings away from the work site and cover them to prevent dust from collecting. The Tenant refused to allow the Landlord and repair persons to access the rental unit for the repair.

The Tenant says they refused because the repair would take two to three days, and there would be a hole in the floor for a few weeks until the Landlord and repair persons made sure the problem had been fully repaired. The Tenant testified that this disruption was too great for them to continue to live in the rental unit, and demanded the Landlord pay for alternate accommodation while the work was completed.

The Landlord testified that the work was to be completed in the basement of the rental unit. The bathroom and living area in the basement would be inaccessible for two to three days while work was completed. The Tenant would still be able to use water and all other facilities in the three-story home. The hole in the basement floor would be temporarily covered while the Landlord and repair persons made sure the problem was fully solved by the repair. The Landlord refused to pay for alternate accommodation when most of the house, and all necessary living space, was unaffected by the repair.

The Landlord proposed an alternate date, August 1-3, 2023, for the repairs to be completed. The Landlord offered to pro-rate the rent to take into account this three-day disruption. The Tenant refused this alternate date and gave their notice to end tenancy shortly after, on July 31, 2023, with a move out date of August 15, 2023.

Section 67 of the Act says that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, regulation, or tenancy agreement, the tenant must prove on a balance of probabilities that:

- 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

Section 27(1)(a) of the Act says a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation.

Section 32(1)(a) of the Act says a landlord must maintain the rental unit in a state of repair that complies with the health, safety and housing standards required by law.

The Tenant claims \$2488.50 for the cost to move out of the rental unit, and claims the Landlord breached the Act and tenancy agreement and caused the Tenant to have to move.

I find the Landlord did not restrict the Tenant's use of water in the rental unit. There was an issue with plumbing which required repair. The Tenant still had full use of water in the rental unit except for the first day when the initial sewage backup occurred. The need to complete repairs to the rental unit does not constitute a breach of the Act or the tenancy agreement.

Both parties testified that the Landlord took immediate action to address the reported problem. The Landlord hired a plumber to address the sewage backup within one day of it occurring on each occasion. When it became apparent that the problem would persist without repairing the source of the problem, the Landlord arranged to repair the issue within one week. For these reasons, I find the Landlord did not breach section 32 of the Act and acted reasonably to repair the rental unit's plumbing.

The Tenant did not mitigate their losses by allowing the Landlord to access the rental unit to complete the repair. Allowing access for repairs is not a breach of quiet enjoyment of the rental unit, because the Landlord is required to complete repairs in accordance with the Act. I find the Tenant did not minimize their damages. The Tenant chose to move out rather than allow access to the rental unit for repairs, and so incurred the cost of moving.

For these reasons, I find the Tenant has not proven their claim of \$2488.50 for the cost to move out of the rental unit.

The Tenant claims \$3360.00 for the cost to replace the bed which was near the bathroom in the rental unit. The Tenant testified that the bed did not come into contact with any raw sewage water.

The Landlord acted reasonably to repair the sewage problem, and offered to move and cover the Tenant's belongings while the repair was made. The Act does not require the Landlord to replace damaged belongings of the tenant. I find the damage to the bed was not caused by a breach of the Act or the actions of the Landlord.

The tenant failed to mitigate their losses by removing or covering the bed. The Tenant could have made a claim through their tenant's insurance to replace the bed if required. For these reasons, I find the Tenant has not proven their claim for \$3360.00 to replace the bed.



The Tenant claims \$22,000.00 for lost wages. The Tenant did not provide any documentary evidence to prove the value of this loss. I find the Tenant failed to minimize their loss. The Tenant works remotely and could have moved their workstation to another area of the house and continued to work. For these reasons, I find the Tenant has not proven their claim for \$22,000.00 for lost wages.

For the reasons above, the Tenant's claim for a Monetary order for damage or loss under section 67 of the Act is dismissed, without leave to reapply.

**Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?**

The Tenant's security deposit has been applied to the Monetary Orders granted to the Landlord in accordance with section 67 and 72 of the Act. For these reasons, the Tenant's application for the return of their security deposit is dismissed, without leave to reapply.

**Is the Tenant 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.

**Conclusion**

I find the Landlord is entitled to a Monetary Order of \$12,300.00 for unpaid rent, loss under section 67 of the Act, and recovery of the filing fee for this application. I Order the Landlord to retain the security deposit of \$3150.00 with interest in partial satisfaction of this debt. I Order the Tenant to pay the Landlord the balance due of **\$9107.61**.

<b>Monetary Issue</b>	<b>Granted Amount</b>
Unpaid rent – August 2023	\$6300.00
Damage or Loss under section 67 of the Act	\$5900.00
Landlord's filing fee	\$100.00
Security Deposit with Interest	- \$3192.39
<b>Total Amount</b>	<b>\$9107.61</b>

The Landlord must serve this Order to the Tenant as soon as possible. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

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, 2024

---

Residential Tenancy Branch