DECISION

Introduction

This hearing dealt with monetary cross applications filed by the parties under the *Residential Tenancy Act* (the Act).

The Landlord applied for:

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

The Tenants applied for:

- a Monetary Order for return of the security deposit and pet damage deposit under section 38of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement under section 67 of the Act

The Landlord was represented by an agent and the building manager.

Tenant R.H. and Tenant L.K. attended the hearing for the Tenants. A translator also attended the hearing to assist the Tenants.

The hearing was held over two dates. An Interim Decision was issued on June 26, 2025 and should be read in conjunction with this decision.

Issues to be Determined

1. is the Landlord entitled to compensation for unpaid and/or loss of rent?
2. Is the Landlord entitled to compensation for other damages or loss under the Act, regulations or tenancy agreement?
3. Are the Tenants entitled to compensation for damages or loss under the Act, regulations or tenancy agreement?

4. Is the Landlord authorized to retain the Tenants' security deposit and pet damage deposit, or should they be returned to the Tenants?
5. Is the Landlord authorized to recover the filing fee paid for the Landlord's application from the Tenants?

Background and Evidence

I have reviewed all of the evidence, including the testimony, but will refer only to what I find relevant for my decision.

The tenancy agreement was signed on March 25, 2025 for a tenancy set to begin on April 2, 2025. The Tenants paid a security deposit of $1,197.50 and a pet damage deposit of $1,197.50. The monthly rent was $2,395.00 payable on the first day of every month; however, for the month of April 2025 the rent was pro-rated to the lesser amount of $2,315.17 to reflect the tenancy started on April 2 instead of April 1, 2025.

I heard that the parties also had a rental incentive agreement that provided the Tenants with the equivalent of one month's rent for entering into a fixed term tenancy agreement. The incentive was to be given to the Tenants by reducing the monthly rent for the first 12 months of tenancy.

On April 2, 2025 the Tenants paid the rent that was due for April 2025 and were provided possession of the rental unit. Later on April 2, 2025 the Tenants tried contacting the building manager. The building manager eventually met with the Tenants in the rental unit the following day, on April 3, 2025. Shortly after that meeting, the Tenants moved out of the rental unit and returned the keys to the building manager. The tenants explained that they had only moved in with their suitcases and they had purchased airbeds and a few other household supplied just before moving in since they did not have a vehicle.

The parties had a different version of events as to what transpired during the meeting in the rental unit on April 3, 2025. It should be noted that the Tenants do not speak English so they were using a digital translation app to communicate with the building manager on April 3, 2025.

According to the building manager, during the meeting of April 3, 2025, the Tenants complained about the noise when the toilet was flushed and the rental unit being cold. The building manager stated he would contact a plumber and instructed the Tenants to close the windows and door, because they were open, and turn up the heat. The building manager left the rental unit because he was of the opinion Tenant R.H. was becoming aggressive.

According to the Tenants, during the meeting of April 3, 2025, the Tenants complained about the noise from the toilet, the cold floors, and a foul smell in the unit. They found the building manager to be dismissive of their concerns and then the building manager left. The Tenant denied being aggressive.

After the Tenants moved out on April 3, 2025, the Landlord proposed a move-out inspection. The Tenants had left the area and did not have an agent in the area to represent them. The Tenants proposed the inspection be done remotely but the Landlord declined to do that.

Below, I have summarized the parties respective claims against each other.

Landlord's claims

The Landlord seeks to recover loss of rent for the period of May 1 – 16, 2025 from the Tenants.

The Landlord submitted that their marketing team advertised the rental unit shortly after the Tenants moved out and on April 17, 2025 the new Tenants submitted a tenancy application. Their tenancy agreement was signed on April 29, 2025 for a tenancy set to begin on May 17, 2025 for the same monthly rent the Tenants were paying.

Since the Tenants did not fulfill their one year fixed term the Landlord seeks to recover the rental incentive the Tenants had received for the month of April 2025.

In addition, the Landlord seeks liquidated damages of $1,000.00 to offset the costs to re-rent the unit due to the Tenants' breach of the fixed term, as provided under term 5 of the tenancy agreement.

Finally, the Landlord seeks to recover cleaning costs from the Tenants. The unit had footprints and paw prints and there were food crumbs the floor.

I note that the Landlord's revised ledger included a late fee; however, the Landlord withdrew this claim during the hearing, and I did not consider it further.

Tenant's responses:

The Tenants are of the position they should not be bound to fulfill the tenancy agreement and the Landlord's claims should be denied and the deposits returned to them because the rental unit was not habitable. In addition, the Tenants had viewed the unit electronically prior to entering into the tenancy agreement and the Landlord did not inform them that the rental unit was located above an unheated car park and a commercial store.

The Tenants pointed to the noisy toilet, cold floors, a foul smell in the rental unit and loud noises from trucks making deliveries to the store below the rental unit as being reasons they found staying in the rental unit to be a "nightmare".

Tenant R.H. testified that he needs to avoid loud noises due to a medical condition.

The Tenants also submitted that the Landlord had made several mistakes in completing documentation and was unprofessional.

The Tenant looked for advertisements after they moved out and they did not see any.

The Tenants also view the cleaning charge to be excessive given the little amount of cleaning that was needed.

Landlord's reply

The rental unit was and is habitable. Several other units in the building are over top the unheated car park and the store, without any issue. The toilet was repaired shortly after the tenancy started so that it no longer makes a noise when it is flushed. The rental unit is heated sufficiently by baseboard heaters and there was no foul smell in the unit.

The amount claimed for cleaning is what the Landlord was charged by the third party cleaner to clean the rental unit.

Tenant's claims

The Tenants seek return of one-half of the monthly rent they paid for April 2025 and compensation for stress and anxiety due to the fact they could not occupy the rental unit for the reasons provided above.

Tenant R.H. submitted that he gave up his job offer due to the condition of the rental unit, requiring them to return to their former rental accommodation not in the area, and the Tenants seek compensation for loss of income.

The Tenants submitted that they also incurred costs to travel back to their former rental accommodation, and they had given away possessions prior to moving. The Tenants seek compensation to recover these losses from the Landlord.

The Landlord denies the rental unit was uninhabitable for reasons provided earlier and is not responsible for the losses the Tenant's incurred due to their decision to move out so soon after moving in.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;

- the violation resulted in damages or loss for the party making the claim;

- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and

- the party who suffered damage or loss has acted reasonably to minimize that damage or loss.

The Landlord bears the burden to establish an entitlement to compensation claimed by the landlord. Similarly, the Tenants bear the burden to prove an entitlement to the compensation they claim.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Landlord's claims

The parties executed a written tenancy agreement requiring the parties, including the tenants, to fulfill its terms until its expiry date of March 31, 2026.

The Tenants brought the tenancy to an early end by vacating or abandoning the rental unit on April 3, 2025.

Under the Act, a tenant in a fixed term tenancy agreement may end the tenancy early in limited and specific circumstances. Needing repairs is not in itself a basis for ending the tenancy early. The Tenant's remedy is to request repairs and if repairs are not made the Tenant may make an Application for Dispute Resolution to seek repair orders.

If a Landlord is in breach of a material term of the tenancy agreement, including a Tenants right to quiet enjoyment, the Tenant may bring the tenancy to an end early, in accordance with section 45(3) of the Act. Section 45(3) of the Act requires the Tenant to give the Landlord a written notice of the Landlord's breach and a reasonable amount of time to correct the breach before the Tenant ends the tenancy. The Tenants did not put the Landlord on written notice of any breach of a material term before they ended the tenancy.

Where a rental unit becomes unexpectedly uninhabitable, such as by fire or other nature disaster, a tenancy becomes frustrated, and the tenancy ends when the frustrating event occurs. The Tenants allege the rental unit was not habitable, but the Landlord denies this to be accurate.

I find the Tenants failed to prove the unit was uninhabitable. Both parties provided consistent testimony that the toilet was noisy when it was flushed, and this is seen in a text message from the Tenant to the Landlord's agent on April 3, 2025; however, I do not consider a noisy toilet to be grounds to find the rental unit uninhabitable, especially when it is an issue that is repairable. Both parties provided consistent testimony that the Tenants had complained of cold floors or coldness on April 3, 2025; however, I find there is insufficient evidence that the rental unit was not sufficiently heated by way of its heating system. I heard the rental unit was equipped with baseboard heaters and I was not provided sufficient evidence that the baseboard heaters were not working. While a rental unit that is located over an unheated parking garage may have floors that are colder than in other types of dwellings, this does not mean the rental unit is uninhabitable as it they may be made more comfortable by turning up the heat or placing rugs on the floor. I was provided disputed evidence that the rental unit had a foul odor, and I find the disputed testimony alone is insufficient for me to conclude it had a foul odor.

As to the location of the rental unit above a store and parking garage, is not an issue the Landlord can repair or change. A rental unit's location goes to its character and location that are factors that limit a landlord's obligation to repair a property under section 32 of the Act. If a rental unit's location is in proximity to an unheated parking garage or commercial areas or noisy areas is of utmost importance to a Tenant, it is upon the Tenant to determine suitability of the unit prior to entering into a tenancy agreement. Typically, Tenants will view a unit in person to assess these characteristics; however, if a Tenant cannot do that, the Tenant may make enquiries of the Landlord prior to entering into the tenancy agreement. The Tenants had viewed the rental unit electronically from a remote location and I was not provided evidence to suggest the Tenants had requested such information concerning its proximity to parking or commercial areas or noisy areas from the Landlord prior to the formation of the tenancy or that the Landlord had made a material misrepresentation to the Tenants.

In light of the above, I find the Tenants did not demonstrate a basis to be released from their obligations under the tenancy agreement they signed, and I find the Tenants remain obligated to fulfill their obligations under the tenancy agreement.

Where a Tenant ends a fixed term early, in breach of the Act or their tenancy agreement, the Tenant may be held liable for unpaid or loss of rent for the remainder of the fixed term, provided the Landlord took reasonable action to mitigate losses.

Although the Tenant questioned the Landlord's efforts to advertise the unit for re-rental, I find I am satisfied the Landlord did take reasonable action to advertise the unit considering the new Tenants submitted a tenancy application shortly after the subject tenancy ended, on April 17, 2025 and their tenancy started on May 17, 2025. Therefore, I grant the Landlord's request to recover the loss of rent for the period of May 1 – 16, 2025 from the Tenants in the amount claimed of $1,236.17 [$2,395.00 x 16/31 days].

Term 5 of the tenancy agreement provides for liquidated damages of $1,000.00 as being the estimated costs to re-rent the unit in the event the Tenants breach the fixed term of the tenancy agreement. I find the amount of the liquidated damages to be within reason compared to the monthly rent and I uphold this term as a valid liquidated damages clause. I have found the Tenants to be in breach of the fixed term by ending the tenancy early without a basis under the Act, and I grant the Landlord's request for liquidated damages of $1,000.00.

As to the Landlord's claim for recovery of the rent incentive given to the Tenants for the month of April 2025, I find the Landlord did not provide sufficient evidence to support this claim. The tenancy agreement does not provide the terms for the rent incentive. Presumably the terms are contained within a separate document, such as an Addendum; however, such a document was not submitted into evidence and the parties did not agree as to its terms during the hearing. Therefore, I find the disputed oral submissions to be insufficient to meet the Landlord's burden of proof.

With respect to the Landlord's cleaning claim, I award the Landlord the amount claimed. Under section 37 of the Act, a Tenant is required to leave the rental unit reasonably clean at the end of the tenancy and based on the photographs before me, I accept that there were visible footprints, paw prints, and food debris that was in need of cleaning. Although the Tenant objected to the amount claimed as being excessive, I am of the view that it would be very difficult to have a cleaner travel to and clean a unit for less than the amount charged.

Tenant's claims for compensation

The Tenant's claims were largely based on their allegation that the rental unit was uninhabitable. For reasons provided in the previous section of this analysis, I reject the Tenant's allegation that the rental unit was uninhabitable. Rather, I find it more likely that the unit was not suitable for their family or to their liking, but that is not a basis to end the tenancy early or seek compensation from the Landlord especially when their dissatisfaction could have been avoided had the Tenants viewed the unit or made pertinent enquiries before entering into the tenancy agreement.

The Tenants also asserted the Landlord had made various mistakes in their documentation and were unprofessional, however, the Act does not provide for compensation for such things in the absence of proving a loss resulted from such acts.

For these reasons, I find the Tenants have not established a basis under the Act, regulations or tenancy agreement for the compensation that they seek from the Landlord, and I dismiss their claims, without leave to reapply.

Recovery of filing fee(s)

The Landlord's claim had merit, and I award the Landlord recovery of the $100.00 they paid for their application from the Tenants under section 72 of the Act.

Disposition of security deposit and pet damage deposit

The Landlord is holding deposits totaling $2,395.00 and I have awarded the Landlord compensation to the Landlord in excess of that amount. Therefore, I authorize the Landlord to retain the Tenant's security deposit and pet damage deposit and accrued interest in satisfaction of the amounts awarded.

I calculate interest on the Tenant's deposits to be $6.61 as of today's date.

Conclusion

I grant the Landlord a Monetary Order in the net amount of **$13.27,** calculated as follows:

Monetary Issue	Amount
Loss of Rent for May 1 – 16, 2025	$1,236.13
Liquidated damages	$1,000.00
Cleaning	$78.85
Filing fee	$100.00
Total compensation awarded to Landlord	$2,414.88
Less: security deposit and pet damage deposit, and accrued interst	-$2,395.00 -$6.61
Monetary Order for Landlord	**$13.27**

The Landlord is provided with this Order to serve and enforce upon the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims 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: July 17, 2025

Residential Tenancy Branch