

## **DECISION**

### **Introduction**

This hearing was convened in response to three applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenants filed two applications requesting:

- 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 under sections 38 and 67 of the Act
- authorization to recover the filing fee for both applications from the Landlord under section 72 of the Act for each application

The landlord filed an application requesting:

- 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
- 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

### **Service of Applications and Evidence**

Both parties confirmed receipt of each other's applications for dispute resolution hearing package (“Applications”) and evidence packages. In accordance with sections 88 and 89 of the Act, I find that both the landlord and tenant duly served with each other's the Applications and evidentiary materials.

### **Preliminary Issue – Landlord's Additional Claims**

The landlord originally had submitted a monetary claim of \$19,388.61 as listed on their Monetary Order Worksheet dated May 15, 2025. The landlord submitted additional

monetary order worksheets on June 10, 2025, which were submitted a part of their evidence package. No formal amendments have been filed the landlord.

Rule 4.6 states the following:

***As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.***

***The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.***

***In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.***

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

As no formal amendments have been filed by the landlord, and as these circumstances do not fall under RTB Rule 4.2, the hearing proceeded to deal with the original claims totaling \$19,388.61 only.

### **Issue(s) to be Decided**

Are the parties entitled to monetary orders requested?

Are the parties entitled to recover the filing fees paid?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me, and my findings around it are set out below.

This tenancy began on January 16, 2025. Monthly rent was set at \$2,500.00, payable on the first day of the month. The landlord holds a security deposit of \$1,250.00 and a pet damage deposit of \$25.00.

This tenancy ended on April 30, 2025 after the tenants were served with a 4 Month Notice to End Tenancy for Landlord's Use on March 17, 2025, for an effective date of July 31, 2025.

## **Tenants' Claims**

The tenants filed an application on April 30, 2025 requesting reimbursement of all of the rent paid for this tenancy for the months of January 2025 to March 2025. The tenant submitted a five page document detailing their claim as they feel that the landlord had violated their right to quiet enjoyment, safety, and privacy in their home. The issues listed included forced dump runs due to lack of room in the garbage and recycling bins, excessive and inappropriate contact from the landlord, unlawful entry into their home in January 2025, verbal abuse and hostility from the landlord, lack of internet and tv service, lack of adequate heating, denied direct access to a mailbox, allegations of fraudulent utility bills, exposure to cigarette smoke and false accusations of smoking marijuana, and a foul odour through the vents.

The tenants testified that they were subject to harassment and unhealthy living conditions, and were sick the entire tenancy.

The tenants also filed an application on May 24, 2025 for the return of their deposits. The tenants testified that the landlords failed to fill out proper inspection reports for this tenancy. The tenants provided their forwarding address to the landlord on April 30, 2025.

The landlord denied the allegations made by the tenants, and argued that the tenants were provided with access to a garbage and recycling bin. The landlord testified that they were the parties who felt unsafe, and argued that the accusations were false and unproven.

The landlord denied the lack of adequate heating, and argued that the tenants had opened the windows to provide ventilation for their marijuana use. The landlord testified that they were the ones who suffered mental and physical distress, resulting in hospitalization.

## **Landlord's Claims**

The landlord filed an application on May 15, 2025 requesting the following compensation:

#1	Damage Deposit	\$ 1250 $\frac{00}{xx}$	\$ 1250 $\frac{00}{xx}$
#2	Home Inspection	\$ 577 $\frac{50}{xx}$	\$ 577 $\frac{50}{xx}$
#3	Estimated Quote Repairs Cleaning ext	\$ 3300 $\frac{00}{xx}$	\$ 3300 $\frac{00}{xx}$
#4	Easy Finacial Loan April 6 2025 (Rent)	Tenants Delinquent Rent	\$ 2801 $\frac{49}{xx}$
#5	City Utilities 60%	\$ 646 $\frac{02}{xx}$	\$ 387.61
#6	Hydro 60%	\$ 380 $\frac{95}{xx}$	\$ 380 $\frac{95}{xx}$
#7	Gas 60%	\$ 591 $\frac{06}{xx}$	\$ 591 $\frac{06}{xx}$
#8	Filing Fee	\$ 100 $\frac{00}{xx}$	\$ 100 $\frac{00}{xx}$
#9	Unpaid Rent	APRIL, May, June, July	\$ 10000 $\frac{00}{xx}$
#10			\$
Total monetary order claim			\$ 19,388 $\frac{61}{xx}$

Attach additional page(s) if necessary.

The landlord testified that this was a fixed term tenancy, ending in July 2025. The landlord testified that they had served the tenants with a 4 Month Notice to End Tenancy for Landlord's Use, which was to end on July 31, 2025, and the tenants did not have the right to move out earlier than that date. The landlord testified that the tenants gave notice on April 2, 2025 that they were moving out on April 30, 2025. The landlord testified that they did not give permission for the tenants to move out earlier than this date. The landlord is seeking a monetary order for the lost rental income for the months of May through to July 2025. The landlord confirmed that the tenants did not pay the April 2025 rent in satisfaction of the compensation owed to them for the 4 Month Notice. The landlord testified that they moved into the upstairs rental unit in June, a week before the hearing date, after performing repairs.

The landlord is also seeking a monetary order for the unpaid utilities for this tenancy. Additionally, the landlord testified that they had to take out a loan due to the tenants' failure to pay the April 2025 rent, and is seeking reimbursement of the costs of taking

out the loan. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on April 15, 2025 after the tenants failed to pay the April 2025 rent.

The landlord testified that the tenants failed to leave the rental unit in reasonably clean and undamaged condition, and requested reimbursement of a professional home inspection, as well as \$3,300.00 to cover the cost of repairs and cleaning.

The tenants responded that they landlord had included a page with the 4 Month Notice to End Tenancy that indicated that they could end the tenancy early, which they exercised. The tenants testified that they had the right to move out on April 30, 2025, and withhold the April 2025 rent in satisfaction of the compensation that they were owed. Accordingly, the tenants dispute that they should owe the landlords any additional rent, or losses associated with the loan.

The tenants argued that the landlord failed to support the claim for damage and cleaning, and argued that they had thoroughly cleaned the rental unit, and had to leave one bag of garbage behind due to lack of room in the garbage bin.

The tenants confirmed that there was one damaged blind that costs \$100.00. The tenants testified that they were afraid to report issues during the tenancy due to the constant false allegations against them. The tenants dispute smoking inside the home, and any smoking was done outside.

## **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. The applicant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

### ***Liability for not complying with this Act or a tenancy agreement***

***7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.***

***(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.***

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

The applicant bears the burden of establishing their claims on the balance of probabilities. The applicant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the applicant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the applicant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

### **Tenants' Claims**

In light of the disputed testimony and evidence before me, I am not satisfied that the tenants have met the burden of proof to support their monetary claims referenced in this dispute.

Although I acknowledge the tenants' complaints, and accept that this tenancy was far from a perfect one, I find that the tenants failed to establish the losses claimed in this application, especially a 100% refund of the rent paid.

I find the evidence supports a tumultuous and conflict filled relationship with the landlord. Although there are many allegations of misconduct, I find that the claims referenced in this dispute amount to penalties rather than actual losses suffered by the tenants.

Although the tenants argued that they suffered the losses claimed, such physical and mental harm caused by the landlord's actions, I am not satisfied that the evidence supports that the landlord's actions are the specific cause of these issues and losses. Similarly, although there may have been issues that were not adequately addressed, such as inadequate room in the recycling and garbage bins, I find that the evidence does not sufficiently support that any specific losses were suffered due to the landlord's failure to provide this facility or service.

I also accept that the tenants felt a lot of discomfort during this tenancy due to odours and what the tenants alleged was a lack of adequate heat. I do not find that the tenants' application had adequately established that these issues were due to any contravention on the landlord's part. Similarly, I am not satisfied that the landlord had removed any

services or facilities agreed upon, and that there was any actual loss with the alleged removal of these services or facilities.

The landlord attended the hearing and disputed all of the tenants' claims. In this case, I find the majority of the issues raised by the tenants cannot be adequately addressed without further investigation, and possible compliance and enforcement measures if applicable. I note that the Director has not delegated to me the authority to perform investigations or impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. The administrative penalty process is also separate from the dispute resolution process, and the *Act* does not allow an applicants to claim for compensation containing a punitive element.

Either party may obtain more information about the Compliance and Enforcement Unit (CEU) through the link below, or by contacting the RTB, and pursue the appropriate remedies through this process if they wish to do so.

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement/enforcement-process>

For all of the above reasons, I dismiss the tenants' application for a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, or for a rent reductions, without leave to reapply. As the tenants were not successful with their claims, I also dismiss their claim to recover the filing fee.

The tenants also requested the return of their deposits. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*.

I find that the landlord failed to fill out inspection reports for this tenancy as required. Accordingly, the landlord's right to claim against the security and pet damage deposit is extinguished.

As per RTB Policy Guideline #17, "Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit...if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the RTA". Accordingly, I find that the tenants are entitled to double their deposits, plus applicable interest on the original

deposits, for a total of **\$2,556.47**. The tenants are granted \$100.00 for the recovery of their filing fee for this file.

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

*A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's claims for damage and loss.

### **Landlord's Claims**

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear.

In this case, the landlords failed to provide completed move-in and move-out inspection reports for this tenancy. In light of the disputed testimony and claims, I find that the landlords' evidence falls short in proving that any damage was indeed caused by the tenants or pet during this tenancy beyond what could be considered regular wear and tear, other than damage to the blinds.

Taking in consideration that the party claiming the loss bears the burden of proof, I find that there is no way to determine exactly what damage occurred during this tenancy, and what the pre-existing condition of the home was. I do accept that there was damage to the blinds, and the tenants did leave behind garbage. I do not find the \$3,300.00 estimate obtained is reasonable for the losses incurred due to the damage and cleaning. I am also not satisfied that the landlord had sufficiently supported how their decision to commission a professional inspection is associated with the tenants' contravention of the *Act*.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord compensation in the amount of **\$400.00** for the tenants' failure to repair the damage blinds, and for the garbage left behind by them



at the end of this tenancy. I dismiss the remainder, plus the landlord's claim for the professional inspection, without leave to reapply.

The landlords also requested reimbursement for rental losses, plus the cost of their loan. I find that this was a fixed term tenancy that was to end no earlier than July 31, 2025. Although the tenants may have mistakenly believed that they had the right to end the tenancy earlier, under the Act, the earliest effective date following the issuance of a 4 Month Notice would have been July 31, 2025.

In this case, the landlord requested a monetary order for the unpaid rent for the remainder of September 2022. Residential Tenancy Policy Guideline #5 addresses a claimant's duty to minimize loss and states the following:

*"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

*The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation<sup>2</sup>. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.*

*Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.*

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."*

I find that the landlord did not make any effort to mitigate any rental losses by attempting to re-rent the rental unit for the remainder of the term. Instead they had performed repairs, and moved into the rental sometime in June 2025. I do not accept that the repairs were due to the tenants' actions or contravention of the Act. I find that the landlords failed to establish any loss of rent or the remainder of the tenancy.

Accordingly, I dismiss the landlord's claim for loss of rental income for the remaining months of the fixed term.

Although the tenants may have moved out prior to the end of the fixed term tenancy, I find that they were entitled to withhold a month's rent after service of the 4 Month Notice, pursuant to section 51 of the Act. As the tenants had moved out on April 30, 2025, the tenants were entitled to withhold the last month's rent. I am not satisfied that the landlord is entitled to recover any rent for this last month, nor any associated interest or losses associated with this right. Accordingly, I dismiss the landlord's claim for unpaid rent for April 2025, as well as their claim to recover the cost of the loan, without leave to reapply.

The landlord also filed a claim for unpaid utilities. I accept that the tenants' portion was 60% of the utility bill.

The landlord requested the following amounts:

City utilities 60%	\$ 646. <sup>02</sup> <sub>xx</sub>	\$ 387.61
Hydro 60%	\$ 380. <sup>95</sup> <sub>xx</sub>	\$ 380. <sup>95</sup> <sub>xx</sub>
Gas 60%	\$ 591. <sup>06</sup> <sub>xx</sub>	\$ 591. <sup>06</sup> <sub>xx</sub>

I have calculated the total utilities owed as follows: \$646.02 for the municipal utilities bill, \$662.51 for the hydro bill, and \$862.59 for the gas bill. I note that a gas bill was submitted for the billing period of December 3, 2024 to January 2, 2025, prior to the beginning of this tenancy. Based on the bills submitted, I find that the tenants are obligated to pay 60% of \$2,171.12, for a total monetary order of **\$1,302.67**.

As the landlord's application contained some merit, I allow the landlord to recover the filing fee paid for their application.

## Conclusion

I grant the tenants a Monetary Order in the amount of **\$853.73** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for double the Tenants' Deposits plus interest	\$2,556.40.

authorization to recover the filing fee for this application for the tenants under section 72 of the Act	\$100.00
Less Monetary Order for Unpaid Utilities	-\$1,302.67
Less Compensation for Damage/Cleaning	-\$400.00
Less Recovery of Filing Fee for Landlord	-100.00
<b>Total Monetary Order provided to the tenants</b>	<b>\$853.73</b>

The tenants are 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remaining claims, 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: July 30, 2025

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Residential Tenancy Branch