

DECISION

Introduction

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

- A Monetary Order for unpaid rent 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

This hearing also 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant was served on May 12, 2025, by email, after a substitute service request was granted on May 13, 2025.

The Landlords were served by registered mail on June 4, 2025, in accordance with section 89(1) of the Act. A Proof of Service form and Canada Post tracking numbers were provided.

Service of Evidence

The Landlords did not raise any concerns regarding service. Based on this, I find the Landlords were sufficiently served with the Tenant's evidence in accordance with section 88 of the Act.

The Tenant argued they only received the Landlords' evidence on July 12, 2025, and it was sent by express post, which is not allowed under the Act. The Tenant advised they

were able to review, and were prepared to proceed as most of the evidence was duplicates of the Tenant's evidence. The parties agreed the Landlords' evidence could be considered in this hearing and the parties were prepared to proceed.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent/utilities?

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

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

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

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

Background and Evidence

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

Evidence was provided showing that this tenancy began on May 1, 2016, the parties disagree about the rent, and a security deposit of \$1,250.00, was paid April 1, 2016. The tenancy ended April 30, 2025.

The Landlords are seeking unpaid rent of \$400.00 and requested to retain the security deposit.

The Tenant is seeking compensation of \$11,400.00, and the return of a portion of the security deposit.

Security Deposit

The parties confirmed around May 9, 2025, the Landlords e-transferred to the Tenant \$813.26 of the security deposit. The breakdown was provided as follows:

- Deposit \$1,250.00
- Interest \$63.26
- Unpaid rent -\$400.00
- RTB filing fee -\$100.00

e-transferred: \$813.26.

The parties also confirmed on June 22, 2025, the Landlord sent \$100.00 to the Tenant for the RTB filing fee that was previously deducted from the security deposit.

The Tenant is seeking the remaining \$400.00 of the security deposit and the Landlords applied to keep the security deposit.

The Tenant argued they provided the Landlords with a forwarding address first by email on May 2, 2025. A copy of the email was provided. The Landlords dispute ever receiving that email containing the forwarding address. The Tenant also sent the forwarding address via registered mail on May 8, 2025. A copy of the Canada post tracking number is provided. The Landlords' agent A.N.S. (the Landlords' Agent) argued they received the forwarding address via registered mail but could not recall the exact date. The Canada Post tracking number shows the package was delivered May 12, 2025.

Unpaid Rent

The Landlords are seeking \$400.00 for unpaid rent for April 2025. The Landlords' position is that rent for April 2025 was \$3,000.00 but the Tenant only paid \$2,600.00.

The Tenant's position is that they paid \$2,600.00 for April 2025 rent because the Tenant reduced rent to the legal amount prior to the illegal rent increases.

Tenant's Compensation

The Tenant is seeking \$11,400.00 in rent paid between October 2022 until March 2025. The Tenant argued rent was legally increased to \$2,600.00 in October 2018 and then in September 2022, the Tenant received a phone call from the Landlords regarding the Landlords not being able to afford the property. The Tenant argued the Landlords asked if the Tenant could pay more rent and the Tenant felt pressured to increase rent by \$100.00 starting October 2022. The Tenant argued they paid \$2,700.00 for October 2022, November 2022 and December 2022.

The Tenant argued then around November 2022, the Tenant got another phone call, and the Landlords were wanting to increase rent for January 2023 because mortgage costs had gone up and the Landlords were worried that they might have to sell. The Tenant provided a recording of this conversation. The Tenant said they agreed to an additional \$200.00 increase then they got an email from the Landlords' Agent that rent was \$3,000.00 starting January 2023. The Tenant argued they felt forced into these rent increases and that they knew around December 2022 that this was not legal but that the Tenant could not take the risk that the relationship could become strained if they brought this issue up.

The Landlords' position is that the Tenant was repeatedly informed the rent increase was not required, the Tenant knew their rights and the Tenant agreed to the rent increases. The Landlords' Agent argued that the Tenant only began paying \$2,700.00 for rent starting November 2022. The Tenant provided an e-transfer from October 31, 2022 and December 1, 2022, and January 1, 2023. I will note there is no e-transfer provided for October 2022 rent. The Landlords' Agent also argued the Tenant voluntarily sent \$2,700.00 for November 2022 rent and December 2022 rent. The Landlords' Agent argued that the rent for January 2023 was agreed to by the Tenant and that the Landlords made it clear that the Tenant was not required to pay the increased amount. The Landlords' Agent first pointed to an email sent to the Tenant on December 3, 2022, which stated "to follow up on our conversation today, we are seeking a rent increase to \$3000/month starting January 2023. As discussed this would be a mutually agreed increase". Then the Landlords' Agent pointed to an email sent from the Landlords to the Tenant on January 7, 2023 which stated "We wanted to be clear that the rent increase would be by agreement and that you were not required to do so".... "I think the best way to move forward is to update the lease and sign off on it. This way it is really clear that you are seeking an additional tenant and what the mutually agreed upon rent is. This way there would be no confusion or miscommunication for either of us".

The Landlords' Agent argued the recording of the conversation between the parties, shows that the Tenant is aware of their legal rights, like the allowable rent increase amount and the Landlords were not forcing the Tenant into increasing rent.

Analysis

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

Part 3 of the Act governs rent increases. Section 41 of the Act establishes that a landlord must not increase rent except in accordance with Part 3 of the Act.

Section 42 of the Act requires that a landlord use the form approved by the RTB and must give a tenant 3 month advance notice of the rent increase. Section 43 of the act, states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations (b) ordered by the director or (c) agreed to by the tenant in writing.

Policy Guideline #37B states that a tenant may voluntarily agree to a rent increase that is greater than the maximum annual rent increase and outlines what is required for this agreement. A voluntary rent increase must be in writing, set out the rent increase, set

out any conditions to the rent increase, be signed by the Tenant and include the date the agreement was signed. Any agreed rent increase must also have a Notice of Rent Increase issued to the Tenant 3 full months before the rent increase is to go into effect.

I find that the rent increase conversation from September 2022 and the rent increase that came into effect January 2023, did not meet the requirements for an agreed rent increase over the maximum annual rent increase as they were not in writing and not signed or dated. Additionally, the Tenant was not given a Notice of Rent Increase 3 full months before either rent increase went into effect. The rent increases were also not 12 months apart, as required under 42(1) of the Act. For the above reasons, I find that the rent increases from 2022 and 2023 were not made in accordance with the Act. As such, the rent increases from 2022 and 2023 did not comply with section 43 of the Act and therefore were not enforceable. The fact that the Tenant agreed, suggested the amount and voluntarily paid the rent increases, does not negate the fact that they were not done in accordance with the Act. I find that the Landlords breached sections 42 and 43 of the Act, and this resulted in a loss to the Tenant.

I decline to award the Tenant any overpayment of rent from October 2022 as the Tenant has failed to prove they paid the unenforceable rent increase for October 2022. I also find that the Tenant offered the rent increase for 2022 and accepted the rent increase for 2023 rather than making an application to dispute them or otherwise inform the Landlords they did not agree with them. The Tenant also testified that around December 2022 they were aware the rent increases were not legal. As the Tenant was aware of their rights, did not dispute the rent increase or otherwise inform the Landlords that they did not agree with them, the Tenant did not minimize their loss as required under section 7(2) of the Act. The Tenant argued they did not want to strain the relationship between the parties by bringing up the rent increase; however, I find this does not excuse the Tenant's requirement for mitigation. Mitigation requires a party to take practical and common sense steps to prevent or minimize avoidable damage. I find that either making an application with the RTB at the time the rent increase happened or informing the Landlords about the legal requirements for a rent increase, are practical and common sense steps to prevent or avoid this loss. I find that the above shows that the Tenant did not mitigate their loss and as such, I limit the Tenant's claim of overpayment of rent to 1 year.

I find that limiting the claim to 1 year is an appropriate period of time to order that the Landlords repay the Tenant the rent overpayment as this time frame balances the rights of the Tenant with the principles of equity and fairness for the Landlords. I find that the Tenant is entitled to compensation for the overpayment of rent from January 2024 to March 2025.

As I have found that the 2022 and 2023 rent increases were not made in accordance with the Act, I find that they are of no force or effect. Therefore, I find that the rent the Tenant should have been paying was \$1,600.00. I calculate the rent overpayment for 1 year between January 2024 to March 2025 as follows:

Timer Period	Monthly Rent Overpayment	Number of Months	Total Overpayment
January 2024 to March 2025	\$400.00	15	\$6,000.00

Therefore, I find that the Tenant is entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$6,000.00.

Are the Landlords entitled to a Monetary Order for unpaid utilities?

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 provided above, the rent increases done in 2022 and 2023 were not made in accordance with sections 42 and 43 of the Act and were unenforceable. Based on the testimony of the parties and the evidence, I find that the Tenant was entitled to deduct \$400.00 from rent, as per section 43(5) of the Act.

As such, I dismiss the Landlord's application for a monetary order for unpaid rent, without leave to reapply.

Are the Landlords 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?

Based on the testimony of both parties and the evidence, I find the following:

- The Tenant paid \$1,250.00 for a security deposit on April 1, 2016.
- The Landlords returned \$750.00 of the security deposit and \$63.26 in interest on May 9, 2025.
- The Landlord returned another \$100.00 of the security deposit on June 22, 2025.

The Tenant advised that they sent the forwarding address via email; however, there is no evidence the parties signed a RTB Form #51 to consent to service by email. Additionally, the Landlords dispute every receiving the forwarding address via email. As such, I find that the email sent containing the forwarding address was not done in accordance with the Act. I find that the Tenant sent the forwarding address May 12, 2025, by registered mail, which is supported by the Canada Post tracking number and confirmed by the Landlords.

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 forwarding address was provided on May 12, 2025, and the Landlords made their application on May 9, 2025, I find that the Landlords did make their application within 15 days of the forwarding address being provided. As the Landlords were not granted any Monetary Order, the Landlords are not entitled to retrain all or a portion of the Tenant's security deposit and the claim is dismissed, without leave to reapply.

Based on the above, I find that the Tenant is entitled to the return of their security deposit, minus the amounts already returned.

Therefore, I find the Tenant is entitled to a Monetary Order under sections 38 and 67 of the Act, in the amount of \$402.29, which includes interest accumulated on the amount not returned.

Is the either party entitled to recover the filing fee for this application from the other?

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

I find that Landlords were not successful in this application. As such, the Landlords' application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I dismiss the Landlords' application in its entirety, without leave to reapply.

I grant the Tenant a Monetary Order in the amount of **\$6,502.29** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act	\$402.29
a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$6,000.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$6,502.29

The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: July 15, 2025

Residential Tenancy Branch