



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHU LEON SUN COFFEE SHOP OWNER AND
REALTOR and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

The tenants attended the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The landlord’s agent VLP (full name referenced on the first page) did not attend.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 22, 2019, firstly, to the landlord’s agent VLP, and, secondly, to the landlord at the address of the unit, both of which are deemed received by the landlord under section 90 of the *Act* five days later, that is, on April 27, 2019.

The tenants provided the Canada Post Tracking Numbers in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution on April 27, 2018.

Issue(s) to be Decided

Are the tenants entitled to:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

Background and Evidence

The tenant CK is the mother of the tenant JK, an adult. The tenant CK provided evidence on behalf of both tenants throughout the hearing.

The tenant CK provided uncontradicted affirmed testimony and evidence as neither the landlord or the agent VPL ("the agent") attended the hearing.

The tenant CK testified that the tenants were residents of a city in another province when the tenant CK obtained employment in a professional field in an urban area in BC commencing January 7, 2019. The tenant JK was accepted for a paramedic program commencing February 1, 2019 in the same city.

The tenants contacted the agent and, after application and screening, were approved as potential tenants in the fall of 2019. The tenants expressed interest in a unit managed by the agent, a 2-bedroom condominium in the downtown area of the city, a 5-minute walk from the tenant CK's employment.

The tenants travelled to a nearby city in the USA to visit family in December 2018. On December 27, 2018, the tenant CK arrived in the city and went to view the unit in the company of RD, an employee of the agent. The unit was unoccupied. The tenant CK approved of the unit and completed the application forms.

On January 2, 2019, the agent informed the tenants that the landlord had approved their application to rent the unit. The tenant CK met with RD that day, signed a lease, and submitted the first month's rent of \$2,695.00; the tenants also submitted a pet and security deposit in the total amount of \$2,695.00 ("the security deposit"). The tenant CK and RD then went to the unit to conduct a condition inspection and exchange keys.

The tenant CK stated that, upon entering the unit, they learned, to the surprise of both, that the unit was occupied. A woman unknown to either, met CK and RD and informed them she had a valid lease to the unit. The tenant CK testified she was astonished at this unexpected turn of events. She stated that RD was similarly surprised and stated that the agent proffered no information about the occupant.

The tenant CK sought and obtained temporary accommodations a considerable distance from her employment while she attempted to find out what had happened and when the unit would be available. She stated she called the agent several times a day without obtaining an explanation of why the unit was suddenly occupied by someone else. The agent eventually suggested that the tenants give up on the unit and look for something else. The agent returned the tenants' rent and security deposit.

The tenants accepted the agent's advice and began looking for another unit. The tenant CK explained that they searched properties managed by the agent, as they had already been approved as tenants; it would cause delay and additional time to apply to a new landlord, submit applications and be approved.

The tenants agreed to rent a second unit from the agent owned by a different landlord; that tenancy was set to start on February 1, 2019. The tenants moved in to the unit that day.

At no time did the tenants receive a satisfactory explanation of the "double renting" of the unit from either the agent or the landlord; the landlord never communicated with the tenants.

The tenants clarified their claims against the landlord as follows:

ITEM	AMOUNT
Rent for January 2019 (\$100.00 a night x 20 nights)	\$2,000.00

Bus expenses from temporary accommodation to workplace	\$112.10
Title search	\$12.42
Storage fee for personal and household possessions for January 2019	\$210.00
Gas – travel to and from Seattle on weekends and parking	\$322.06
Clothes and toiletries	\$290.50
Loss of revenue for tenant JK	\$3,830.40
Loss of quiet enjoyment	\$4,000.00
Reimbursement of the filing fee	\$100.00
Total Monetary Award Requested	\$10,877.48

Each of the tenants' claims are addressed separately.

Rent for January 2019 (\$100.00 a night x 20 nights)

The tenant CK testified that she stayed in temporary accommodations in another area of the city during the month of January 2019. She provided an invoice in support of this aspect of her claim in the amount of \$2,000.00. She testified that she quickly found a small rental while she struggled to obtain information on when the unit would be available. Her daughter, the tenant JK, remained outside the province with family, waiting for accommodation to be secured.

Bus expenses from temporary accommodation to workplace

The tenant CK testified that the unit was within walking distance of her work and that her temporary accommodations were not. As a result, she incurred unexpected transit expenses of \$112.10 in support of which she provided a receipt.

Title search

The tenant stated that she was uncertain about the name of the landlord and paid for a title search to ascertain this for which she incurred an expense of \$12.42, in support of which she submitted a receipt.

Storage fee for personal and household possessions for January 2019

Because the unit was unexpectedly inaccessible, the tenants paid for storage of their possessions for an extra month, thereby incurring an unanticipated expense of \$210.00. In support of this expense, the tenants submitted a copy of the invoice for storage for the month of January 2019.

Gas – travel to and from Seattle on weekends and parking

The tenant CK testified that she drove to Seattle each weekend during January to see her daughter who remained there with their pets. In support of this expense, the tenants submitted receipts for gas in the amount of \$322.06, this amount including a parking fee for obtaining the keys to the new unit, which the tenant CK testified related specifically to expenses related to the inconvenience of finding a new place to live.

Clothes and toiletries

The tenant CK testified that she incurred expenses for items, the purchase of which became necessary as all her clothes and possessions were in storage. In support of this claim of \$290.50, the tenant CK submitted three itemized receipts. The tenant JK did not submit any claim under this category.

Loss of revenue

The tenant JK submitted a claim for loss of revenue of \$3,830.40. She was unable to start the paramedic course as planned in January or February because of the unexpected loss of the unit and the delay in moving; she finally started the program on March 1, 2019. The tenant JK estimated that this delayed her completion of the course by two months during which she would have earned income of \$3,830.40 based on current paramedic hourly rate pay scale information.

Loss of Quiet Enjoyment

The tenants requested \$2,000.00 each as an “inconvenience fee” which is akin to a claim of loss of quiet enjoyment. The tenant CK explained that the family was completely disrupted by the unexpected unavailability of the unit. She said the amount of lost time was incalculable; every day, she spent many hours communicating with the agent, attempting to work out a solution, searching for a new place to live, and finally

finding replacement permanent accommodations. The tenant CK testified she drove to the USA city each weekend where her daughter resided with the family pets until the permanent move could be made. The family's settlement in Vancouver was delayed and considerable chaos, anxiety and cost was generated.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Claims for expenses

I address the first six claims of the tenants, as set out in the following table:

ITEM	AMOUNT
Rent for January 2019 (\$100.00 a night x 20 nights)	\$2,000.00

Bus expenses from temporary accommodation to workplace	\$112.10
Title search	\$12.42
Storage fee for personal and household possessions for January 2019	\$210.00
Gas – travel to and from Seattle on weekends and parking	\$322.06
Clothes and toiletries	\$290.50
Expenses Total	\$2,947.08

I have considered the tenants' testimony and evidence, including the invoices submitted in support of each of these claims. I find the tenant CK's evidence credible, well organized, presented clearly and well supported by documents.

I find that the landlord was in breach of the tenancy agreement between the parties because the landlord, suddenly and without warning or explanation, withdrew the unit from availability for occupation by the tenants the day they were prepared to move in. I accept the tenant CK's evidence that no reason was ever proffered for this untoward turn of events despite her repeatedly asking the agent and the landlord for an explanation.

I find the tenants incurred these expenses in the amount claimed and that they were caused directly by the landlord's breach of the agreement. I find that the tenants did everything reasonable to keep their expenses to a minimum and to find alternate accommodation as soon as possible, even renting through the same agent. I therefore find that the tenants mitigated their expenses.

I therefore find the tenants have met the burden of proof on a balance of probabilities with respect to this aspect of their claims as set out in the above table and I grant a monetary award in the amount of \$2,947.08.

Loss of revenue for tenant JK

In considering the four-part test set pit above, I do not find the tenants have established this loss of future income as flowing directly from the landlord's breach of the agreement. I find the loss of income to be speculative and hypothetical.

I therefore disallow this aspect of the tenants' claim; it is dismissed without leave to reapply.

Loss of quiet enjoyment

Section 28 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means **substantial interference with the ordinary and lawful enjoyment of the premises**. This includes situations in which **the landlord has directly caused the interference**, and situations in which the landlord was aware of an interference or unreasonable disturbance but **failed to take reasonable steps to correct these**.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or

unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).

(emphasis added)

I find the tenant CK was credible, articulate and clear about the substantial interference the sudden cancellation of the tenancy had upon the tenants. Instead of moving in to a comfortable, conveniently located unit with their pets after travelling across the country, the tenants' plans were thrown into chaos. The tenant JK remained in another city and delayed starting her educational course. The tenant CK was compelled to live alone in temporary accommodations a greater distance from her employment than planned and travel to another city on weekends to see her family. I find the tenants were genuinely disturbed and inconvenienced by the landlord's breach of his obligations under the tenancy agreement. The landlord's conduct is especially egregious as the landlord did not communicate with the tenants and left them wondering if the unit would be available to them in the future or was cancelled. The tenants were denied information on which they could plan their move to the city.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find it is reasonable to place a nominal monetary value on the tenants' loss of quiet enjoyment for the month of January 2019. In considering all the evidence and testimony, I find it reasonable to award the tenants the sum of \$4,000.00 for the month as requested, being \$2,000.00 for each tenant.

As the tenants have been successful in their application, they are entitled to recover \$100.00 paid for the filing fee.

I therefore grant the tenants a monetary award of \$3,400.00 as follows:

ITEM	AMOUNT
Expense set out in table above	\$2,947.08
Loss of quiet enjoyment	\$4,000.00
Reimbursement of the filing fee	\$100.00
Total Monetary Award	\$7,047.08

Conclusion

The tenants are granted a monetary order in the amount of **\$7,047.08**.

The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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 *Residential Tenancy Act*.

Dated: July 21, 2019

Residential Tenancy Branch