



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bredso Capital Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      LL: MNRL-S, FFL  
                             TT: MNSDS-DR, FFT, MNDCT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on March 8, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent and utilities;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on March 17, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Landlord’s Agent M.B and the Tenant J.W. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the Tenants' security deposit pursuant to Section 38 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Tenants entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
6. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified that the fixed term tenancy began on May 20, 2019 and was meant to end on June 1, 2020. During the tenancy, rent in the amount of \$3,400.00 was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,700.00 which the Landlord continues to hold. The parties testified that the tenancy ended early on February 29, 2020.

#### The Landlord's Claim

The Landlord is claiming monetary compensation for unpaid rent in the amount of \$949.32. The Landlord stated that the Tenants provided their notice to end tenancy to the Landlord on January 30, 2020, indicating that they will be vacating the rental unit effective February 29, 2020. The Landlord stated that the parties had agreed to a fixed term tenancy and that they are not permitted to end the agreement early. The Landlord stated that he was able to secure a new occupant to re-rent the rental unit starting on

March 7, 2020. As such, the Landlord is claiming the loss of rent from March 1 to March 6, 2020 in the amount of \$949.32.

The Tenant responded by stating that they found mold in a closet of the rental unit which caused the Tenants some health and safety concerns. The Tenant stated that she was not interested in waiting for the Landlord to remediate the mold issue, therefore, the Tenant felt entitled to end the tenancy early on February 29, 2020. The Tenant stated that the Landlord did not take steps to re-rent the rental unit until sometime in March 2020 once the Tenants vacated the rental unit. As such, the Tenant stated that the Landlord did not mitigate his loss of rent.

The Landlord had also included a claim for an unpaid utility bill in the amount of \$391.73 which the Tenants were required to pay. During the hearing, the Landlord elected to withdraw this claim as he was uncertain as to if the bill had in fact been paid by the Tenants. The Landlord's claim for monetary compensation relating to the utility bill is therefore withdrawn. The Landlord is at liberty to reapply if the bill has not been paid by the Tenants. If successful, the Landlord is also seeking the return of the filing fee.

#### The Tenants' Claim

The Tenants are seeking the return of double their security deposit in the amount of \$3,400.00. The Tenant stated that the tenancy ended on February 29, 2020 and that they provided the Landlord with their forwarding address on March 4, 2020. The Landlord confirmed receipt of the Tenants' forwarding address on March 4, 2020. The Tenant stated that they did not consent to the Landlord retaining their deposit and stated that the Landlord has not yet returned any amount of the deposit to the Tenants.

The Tenants are also claiming for \$502.49 relating to an overpayment of utilities throughout the tenancy. The Tenant stated that the agreement between the parties was that the Tenants would be responsible for their water consumption, but that garbage, organics, and sewage disposal was included in the tenancy agreement. The Tenant stated that at the end of the tenancy, she noticed that the Tenants had been paying the full amount of each utility bill which included not only water, but also the garbage, organics, and sewage disposal. The Tenant stated that she calculated the overpayment of utilities to equal \$502.49. The Tenant prepared a spreadsheet of the calculations in support.

The Landlord stated that he was not served with the Tenants' calculations of the overpayment of utilities and therefore was not prepared to respond to the Tenants' claim. If successful, the Tenants are seeking the return of their security deposit.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) *is not earlier than one month after the date the landlord receives the notice,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, the Tenant stated that she felt justified in ending the fixed term agreement due to the fact that she found mold in a closet in the rental unit which created a health and safety concern. I accept that the Tenants provided the Landlord with their notice to end tenancy shortly thereafter as the Tenants were not interested in waiting for the Landlord to remediate the mold problem.

Policy Guideline #8 describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Furthermore, in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) *that there is a problem;*
- (b) *that they believe the problem is a breach of a material term of the tenancy agreement;*

- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

According to Section 45(3) of the Act, if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, I find that the Tenants did not communicate that they believed the mold problem was a breach of a material term of the tenancy agreement, nor did they indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Tenants did not provide adequate notice to the Landlord pursuant to section 45(3) of the Act.

I find that the Landlord is entitled to monetary compensation for the loss of rent from March 1 to 6, 2020 as the Landlord was able to secure a new occupant to re-rent the rental unit as of March 7, 2020. The parties agreed that the monthly rent was \$3,400.00. As there was 31 days in March 2020, I have calculated the per diem rate of rent to be ( $\$3,400.00 / 31 = \$109.67$ ). I find that the Landlord is entitled to compensation for 6 days for rent in the amount of ( $\$109.67 \times 6 = \$658.02$ ).

As the Landlord was successful with his Application, I find that he is entitled to the return of the \$100.00 filling fee.

### Tenants' Claim

Section 38(1) of the Act requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants vacated the rental unit on February 29, 2019 and provided the Landlords with their forwarding address on March 4, 2020. The Landlord confirmed receipt of the Tenants' forwarding address on March 4, 2020. After receiving the Tenants' forwarding address, pursuant to section 38(1) of the Act, the Landlord had until

March 19, 2020 to repay the deposit or make an application for dispute resolution. The Landlord submitted their Application to retain the Tenants' security deposit on March 8, 2020.

In light of the above, I find that the Landlord complied with Section 38(1) of the Act, therefore, the Tenants' Application for double their security deposit is dismissed without leave to reapply.

The Tenants are seeking reimbursement in the amount of \$502.49 relating to an overpayment of utilities throughout the tenancy. During the hearing, The Tenant stated that she calculated the overpayment of utilities to equal \$502.49. The Tenant prepared a spreadsheet of the calculations in support. The Landlord stated that he was not served with the Tenants' calculations of the overpayment of utilities and therefore was not prepared to respond to the Tenants' claim.

According to the Residential Tenancy Branch Rules of Procedure 3.17; evidence not provided to the other party in accordance with the Act, may or may not be considered during the hearing. As the Tenant confirmed during the hearing that she did not serve a copy of the calculations relating to the overpayment of utilities to the Landlord, I find that I cannot consider the Tenant's documentary evidence relating to their claim and therefore dismiss the Tenant's claim with leave to reapply.

As the Tenants were unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$758.02. As the Landlord currently holds the Tenants' security deposit in the amount of \$1,700.00, I order that the Landlord return the remaining portion of the Tenants' deposit in the amount of  $(\$1,700.00 - \$758.02 = \$941.98)$ .

Pursuant to section 67 of the Act, I grant the Tenants with a monetary order in the amount of \$941.98 which represents the remaining portion of their security deposit.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$758.02. Pursuant to section 67 of the Act, the Tenants are granted a monetary order in the amount of \$941.98 which represents the remaining portion of the Tenants' security deposit currently being held by the Landlord. The monetary order must be

served to the Landlord and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 22, 2020

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Residential Tenancy Branch