



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Reliance Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MNR-S, MND-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord) and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all the considerable amount of oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The tenants confirmed receiving the landlord's evidence. The landlord said she received the tenants' evidence the day prior to the hearing; however, she said that she had time to review and consider the evidence. As the landlord made no objection, I considered the tenants' evidence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, including recovery of the filing fee?

Background and Evidence

The written tenancy agreement filed into evidence shows a tenancy start date of October 1, 2019, a fixed term through September 30, 2020, monthly rent of \$2,800, due on the 1st day of the month, and a security deposit of \$1,400 being paid by the tenants to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord retained the tenants' security deposit, having made this claim against it.

The landlord's monetary claim is:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent, April	\$2,200
2. Unpaid rent, May	\$2,800
3. Rent deficiency to end of fixed term, (\$250 x 5 months)	\$1,250
4. Liquidated damages	\$1,400
5. Removal of tenants' belongings	\$500
6. Filing fee	\$100
TOTAL	\$8,250

Unpaid rent, April, May -

The landlord submitted that the tenant, KW, said she moved out on March 13, 2020, but that she did not confirm moving out until April 1, 2020. The landlord submitted the tenants failed to provide proper notice and they vacated prior to the end of the fixed term, or September 30, 2020.

The landlord submitted that the tenants owed the monthly rent of \$2,800 for April, due to the improper notice. The landlord advised that their monetary claim for April is \$2,200, as they received a \$600 rent supplement from an outside agency.

The landlord submitted that the tenants also owe for monthly rent of \$2,800 for May 2020, as they advertised for, but were unable to find new tenants for that month. Due to the tenants breaking their fixed term agreement, the tenants owe the landlord for that month as well.

Loss of rent for the remainder of the fixed term-

The landlord submitted that they initially advertised the rental unit as the same rent charged to the tenants; however, they were unsuccessful in securing a new tenant for May 2020. The landlord submitted that they had to drop the monthly rent asking price to \$2,550 in order to secure new tenants. The landlord claims the rent deficiency of \$250 per month for the balance of the fixed term. June, July, August and September.

I note the landlord's monetary claim for the rent deficiency also included a claim of \$250 for October, beyond the end of the fixed term, for a total monetary claim of \$1,250.

Liquidated damages-

The landlord submitted that the tenants owe the amount of \$1,400 as liquidated damages due under clause 9 of the addendum to the written tenancy agreement, as they vacated the rental unit prior to the end of the fixed term.

The landlord explained that the liquidated damages portion of the tenancy agreement is intended to pay for administrative costs incurred in securing a new tenant, such as advertising and staff costs.

Removal of tenants' belongings –

The landlord said that they paid \$500 to have the tenants' belongings removed after the end of the tenancy, as they failed to remove all their personal property.

The landlord's relevant evidence included email communication between the parties, photographs of the rental unit at the end of the tenancy, communication with an abatement company, and the past Residential Tenancy Branch (RTB) Decision on the tenants' application. That application number is referred to in the style of cause page of this Decision.

The tenants' relevant testimony included –

Tenant, KW, provided the tenants' response.

The tenant did not deny vacating the rental unit prior to the end of the fixed term, as the landlord's agent wrote to them on March 22, 2020, and said they could be released from their fixed term tenancy agreement without penalty. The tenant asserted this was a mutual agreement to end the tenancy and she chose to move out due to the ongoing health issues with the mold and the condition of the rental unit.

Additional evidence –

Both parties referred to a previous dispute resolution matter which dealt with the tenants' application for an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons. The landlord provided a copy of that Decision in their evidence, as did the tenants with a partial copy.

The previous Decision was dated April 20, 2020, and the hearing was held on April 20, 2020. The previous Decision noted the tenants filed for dispute resolution on March 25, 2020. The arbitrator in that Decision wrote that KW requested the hearing be adjourned as it was her position that tenant MS made the application and did not inform her of such until April 17, 2020. The other arbitrator noted that the two tenants were whispering in the background, that MS re-stated he informed KW of the hearing on April 17 and that he did so due to their tenuous relationship.

Ultimately, the tenant KW requested to have the application withdrawn and that request was granted with the Decision of April 20, 2020.

The tenants submitted a significant amount of evidence, which mostly related to the state of the rental unit and their issues with the same. The tenants labelled one page "Tenant is seeking:"

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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.

In other words, the tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term.

As to the landlord's claim for unpaid rent, loss of rent revenue, the rent deficiency through the end of the fixed term, and the liquidated damages, there was no dispute that the tenants breached the terms of their written tenancy agreement by ending the tenancy before September 30, 2020. Additionally, I find the tenants were obligated under the written tenancy agreement to pay the landlord a sum of \$1,400 as liquidated damages in the event they breached their fixed term agreement.

In this case, the evidence shows this tenancy was troubled from the beginning. The tenants made complaints about the condition of the rental unit from the beginning of the tenancy and did not move in on the first day allowed. The tenants made repeated repair requests concerning leaks, mold, heating and flooring issues, which the landlord began to address. The evidence, however, shows that the remediation of the mold issues were delayed or took longer than the normal amount of time due to the Covid-19 pandemic. Contractors were not able to deal with repairs as quickly as in the past, according to the documentary evidence.

The landlord confirmed that the rental unit was required to be empty in order to repair the flooring.

The repairs appeared to be an ongoing process for some time, and extended beyond the end of the tenancy.

In addition, the landlord's evidence shows multiple noise complaints from other tenants in the residential property about the tenant and her child. The landlord had prepared a One Month Notice to End Tenancy for Cause, but due to the illness of the building manager at that time and then due to the eviction moratorium after the State of Emergency was declared, the Notice was never issued.

I have not referred to most of the tenants' evidence, as this dispute dealt with the landlord's application. I find their evidence would have been more appropriate in their request for emergency repairs, as was their dispute heard on April 20, 2020.

I have reviewed the evidence, and find it unclear as to when the tenants actually vacated the rental unit; however, the landlord's evidence shows at least by April 5, 2020, tenant KW confirmed having vacated the rental unit.

In most circumstances, the landlord would therefore be entitled to the months of lost rent revenue due to the tenants' breach of the fixed term agreement, subject to the landlord doing whatever is reasonable to minimize their loss.

In this case, however, I reviewed the landlord's own evidence, which was an email sent to the tenants on March 22, 2020, informing the tenants they could move to another unit in the building or that if they should ever decide to move to another building, "please be assured that we will release you from the fixed term contract and you will receive your security deposit in full".

In another email on April 6, 2020, sent to the tenant by the landlord's agent, the tenant was informed that "We agree to return your March rent and your SD, and we agree to end your tenancy, but we need to see a proof of RTB application withdrawal prior to proceeding with the return of the SD and March rent".

While the landlord argued that their agreement to release the tenants from their obligations under the fixed term tenancy agreement was only if the tenants withdrew their application for dispute resolution, I do not agree. The email of March 22, 2020, did not mention the RTB application at all, and in the email of April 6, 2020, the agreement did not specifically state that the withdrawal of the RTB application had to occur prior to the hearing before the landlord would release the tenants from liability.

I find this evidence is confusing and contradictory and therefore, not reliable. Rather, I find the evidence shows the landlord was dealing with a number of repair requests from the tenants, and that the repairs were delayed due to the Covid-19 pandemic.

Overall, I find the evidence shows the landlord's clear intent was to either have the tenants move to another unit in the building without a mold issue or allow the tenants to vacate, penalty free.

I find the legal doctrine of "waiver" applies here, as I find the landlord's clear intention was to forgo the exercise of their contractual right under the fixed term tenancy agreement. I find it clear on a balance of probabilities the tenants relied on this waiver to vacate the rental unit early and the landlord may not now seek to enforce the terms of the written tenancy agreement.

As a result, I dismiss the landlord's monetary claim for unpaid rent for April of \$2,200, loss of rent revenue (unpaid rent) for May of \$2,800, the rent deficiency for the remaining months of the fixed term when the landlord received a lower rent, or \$1,250, and the liquidated damages of \$1,400.

As to the landlord's monetary claim of \$500 for removal of the tenants' personal property, although I did not see a receipt for that cost, I have reviewed the landlord's photographic evidence. I find this evidence shows that the tenants either abandoned some of their personal property or failed to leave the rental unit reasonably clean. Considering the state of the rental unit after the tenancy ended, I find the landlord's claim to be reasonable under the circumstances.

I therefore find the landlord has established a monetary claim of \$500.

As the landlord was partially successful with their application, I award them recovery of their filing fee of \$100.

I grant the landlord a total monetary award of \$600, which includes their costs to remove the tenants' personal property for \$500 and the filing fee of \$100.

I direct the landlord to retain the amount of \$600 from the tenants' security deposit of \$1,400, and order the landlord to return the balance of the tenants' security deposit of \$800, immediately.

To give effect to this order, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$800, which is included with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application was granted in part. The landlord was granted a monetary award of \$600, directed to retain that amount from the tenants' security deposit and ordered to return the balance of \$800 to the tenants immediately.

The tenants are granted a monetary order in the amount of \$800 in the event the landlord does not comply with this order.

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: September 8, 2020

Residential Tenancy Branch