Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL / MNRL-S MNDCL-S, FFL / MNSD, MNDCT, FFT**

Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the "**Act**").

The landlords brought two applications. In their first application they sought:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $4,430 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

In the landlords' second application they sought:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $15,050 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants brought an application of their own in which they sought:

- a monetary order for $4,200 representing the return of the security deposit and pet damage deposit, pursuant to sections 38 and 62 of the Act;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2,040 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

This matter was reconvened from prior hearings on March 17, April 20, June 5, and September 15, 2020. I issued an interim decision following each.

All parties attended the hearing and were given a full opportunity to be heard, to cross-examine the other parties on their affidavits, to make submissions, and to cross-examine witnesses. The tenants were represented by counsel ("**SK**"). The landlords, who were represented by counsel at prior hearings, represented themselves at this hearing.

The hearing started almost one hour late, due to technical issues and a clerical error made by the RTB. Despite this, the parties were able to complete this hearing in the allotted time.

In my interim decision following the September 15, 2020 hearing, I ordered that this hearing be restricted to the cross-examination of the parties on their affidavits and closing arguments. Despite this, at the outset of the hearing, SK requested that we do away with the cross-examinations, and allow the parties to give their direct testimony. I declined to vary my order, as the parties have submitted sworn affidavits containing their direct evidence. To alter the order would have prejudiced the landlords, who had prepared for this hearing based on the directions in my September 15, 2020 interim decision. Additionally, were I to do away with the cross-examinations, each party would not have the opportunity to test the evidence of the other.

The hearing proceeded with cross-examinations of those individuals who provided affidavits, and with closing arguments. The parties also provided written submissions prior to the September 15, 2020 hearing, and I will rely on them as well.

Issues to be Decided

Are the landlords entitled to:

1) a monetary order for $19,480;
2) recover the filing fee; and
3) retain the security deposit in partial satisfaction of the monetary orders made?

Are the tenants entitled to:

1) a monetary order of $6,240;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting September 1, 2019 and ending on February 15, 2020. Monthly rent was $4,200 and is payable on the fifteenth of each month. The tenants paid the landlords a security deposit of $2,100 and a pet damage deposit of $2,000 (collectively, the "**Deposits**") The landlords still retain the Deposits.

The rental unit is a single-detached house with a basement suite. The tenants rented the entire house and intended for tenant JC to reside in the basement suite and for tenant SC and her family to reside on the upper level. In the parties' text messages near the end of the tenancy, it was suggested the tenants had two separate tenancy agreements (one of the upper level and one for the basement suite). However, in advance of the September 15, 2020 hearing, the parties submitted an agreed statement of facts in which they agreed that the tenancy agreement "was for a fixed term period of 6 months for $4200.00 per month ending on February 15, 2020." This is consistent with the signed tenancy agreement entered into evidence. As such, I find that there is a single tenancy agreement for the rental of the entire rental unit.

Prior to entering into the tenancy agreement, the tenants resided in Newfoundland and Labrador. They needed to relocate to British Columbia to continue with the medical care of one of their family members who lives with them ("**CC**"), as one of her specialists was moving to BC.

The tenants found an advertisement for the rental unit online and contacted landlord AD about renting it. SC wrote in her affidavit that AD required confirmation that the tenants would able to pay rent, and that JC sent AD a copy of a grant they would be receiving from the Newfoundland and Labrador government. AD accept this as proof of their ability to pay and sent them a copy of the tenancy agreement to sign. The tenants signed a copy on August 13, 2019.

SC and her family drove from Newfoundland and Labrador to British Columbia and arrived at the rental unit on September 3, 2019. CC and JC arrived via an air ambulance on September 6, 2020.

The landlords did not complete a move in condition inspection report.

SC and JC provided evidence that the condition of the rental unit upon moving in was not acceptable. SC wrote that the stove in the basement suite was unclean and that the tenants had to hire a cleaner to clean the entire rental unit who worked for 17 hours and were charged $765.

The tenants did not get an invoice from the cleaner but did submit a text message exchange between the cleaner and SC wherein the cleaner stated the amount and cost of cleaning. The tenants submitted photos of the stovetop taken by the cleaner which show a large amount of grease and grime buildup under the elements. The landlord denied that this was a photo of a stove in rental unit, but the background in the photos is consistent with that of the basement suite as can be seen in other, undisputed photos.

The tenants also submitted photos of dirty, dusty, and moldy windowsills and cupboards which they say were taken at the start of the tenancy. The tenants say the submitted photographs of the rental unit are indicative of the condition of the entire rental unit.

The landlords denied that the rental unit required cleaning. Rather, they pointed to a text message exchange between AD and SC on September 3 and 4, 2019 as follows:

> September 3, 2019
>
> AD: How is everything please?
>
> SC: Great, thank you! We love the house, and cannot thank you enough. Will rest up and tackle the shopping tomorrow!
>
> AD: Thx
>
> September 4, 2019
>
> AD: How was your first night in BC?
>
> SC: We slept very well, thank you! Extremely comfortable, already.
>
> [later in the day]
>
> SC: It has been like a dream to be here. A perfect day, for all of us! Thank you.

AD: Are you able to operate all electric switches, shower and stoves? If you need any help, please feel free to ask.

SC: Yes, everything is working good so far.

The landlords argued that this text message exchange suggests that the rental unit was in an acceptable condition for the tenants at the start of the tenancy. SC testified that on September 3, 2019, she had just completed a cross-country drive to come to the rental unit, and that she was not in a condition to properly assess its cleanliness. Additionally, she testified that the house, even in the condition it was in, was "a dream" compared to a cramped car.

SC and JC provided evidence that there were other issues with the rental unit when they moved in, including:

1) a malfunctioning washing machine;
2) faulty thermostats; and
3) faulty gas fireplaces.

SC wrote that the tenant advised the landlords of these issues, and that landlord AD directed her to a YouTube video as to how to fix the washing machine. She wrote that the landlords' son SD wrote that the fireplaces were not advertised or included in the tenancy agreement.

I will not provide further details, as, for reasons set out below, it is not relevant to the parties' applications.

The Flood

On October 5, 2019, the toilet in the basement suite bathroom backed up and caused sewer water to flood into the basement suite (the "**Flood**"). The landlords argued that the tenants caused the Flood and point to a rag that was pulled from the pipe by the plumber that they allege was flushed by the tenants. The tenants deny that they were responsible for the Flood and denied flushing a rag down the toilet. They speculated that the Flood was caused by a faulty pipe damaged by tree roots in the backyard or by some other cause.

The landlords have not claimed compensation for damage to the rental unit caused by the Flood. The parties spent a great deal of time at the hearing cross-examining each other as to the cause of the Flood and who should bear responsibility for it. However,

the parties only argue that the cause of the Flood is only relevant as it pertains to whether or not the tenants breached the tenancy agreement be vacating prior to the end of the tenancy. For reasons which I will discuss later, I do not find that it is necessary to determine who caused the Flood in order to adjudicate this matter, as, whether it was caused by the landlord, the tenant, or neither of them, the result would be the same.

The Aftermath of the Flood

It is not disputed that the Flood caused the basement suite to be inundated with sewer water. It is also not disputed that the basement suite was not fit for habitation following the Flood until it had been properly cleaned.

Following the Flood, AD & SC and SD & SC exchanged text messages regarding the Flood and its impact on the tenancy. The tenants submitted these conversations into evidence. The relevant portions of the exchange between AD and SC are as follows:

> October 6, 2019
>
> SC: Please let me know what time to expect cleaners or plumber today? We have appointments this evening. Thank you
>
> AD: Thx. Please note trade people don't work on Sunday though we are trying hard. If you want I can come and clean up.
>
> SC: My mom is moving out from downstairs, today. She will be moving in with us, until we can find a healthier solution for our family. Feel free to rent the [basement suite], anytime.
>
> AD: We rented you full house not separately. We are trying hard to get it cleaned. Thx.

SD testified that his father AD asked him to communicate with the tenants, as AD was intending to leave the country (AD ultimately stayed in BC). The relevant portions of the text message exchange between SD and SC following the Flood are as follows:

> October 6, 2019
>
> SD: I'll be taking over as my dad will be out of town thanks

SC: Great the basement apartment is currently soaking in raw sewage backed up from the toilet (2 nights ago). Your father said he would get some cleaners today. He's not. That will be another day your beautiful house is soaking in sewage. My mom's health is important. She is moving out from downstairs immediately, upstairs with us until we have a healthier solution for our family. We've been here a month, and your father has managed to blame us for everything wrong with this house. The house has unexpected problems. Not our fault! He said last night, I am free to move out. I will be looking for a new place to rent. I will let you know when I find one period feel free to rent the basement out, anytime. It will be empty this afternoon.

SD: Okay sounds good. We will get the basement cleaned as soon as possible. Let me know when you find a new place. It appears there was a rag that was flushed down the toilet and you didn't realize the damage for a few days. That is not reasonable conduct by a tenant. I will re advertise the house for rent. Please feel free to assist renting out the house. In the meantime you will be on the hook for rent as per our residential tenancy agreement. Please feel free to give me a call if you have questions.

SC: It is not reasonable that you are blaming us for an old rag. We only have new cloths here. We had nothing old to use! We bought new blue cloths to clean with. We have nothing old here, as we are still waiting for the movers.

SD: I don't quite understand. During our move in check in the toilet downstairs was flushing OK.

SC: It was old. Not us!

SD: That's not correct. Regardless the basement will be a clean now.

SC: Great. Too bad you weren't willing to do that for your paying tenants.

SD: Whenever you find a new place give me a call so we can have a move out check and then we'll be fine.

SC: Will do.

SD: I don't quite understand again. You notified us of the basement and we are now getting it fixed. A toilet flooding a month after moving is not the responsibility

of the landlord. If anything you should have notified a sooner so damage to the entire basement could have been prevented. Anyway what's done is done. Let's move on.

SC: I do expect a full refund with regards to deposits we paid, as well (pets and damage).

SD: We will go through all deposits on move out. Please let me know when you have a move out date. If you can find a place for November 1 that would be great. Thanks for your messages. I'll be available by text or call anytime.

SC: For the last place, it was not us. Just like the broken washing machine wasn't us… both fireplaces don't work (not us) ... There are many problems with this house you are obviously unaware of. I'm sorry for that. Have a great day. I will notify you the minute I find another home.

SD: I apologize for the washing machine. The fireplaces weren't advertised as included in the rental in the residential tenancy agreement. I understand your paying cycle is from the 15th.

SC: The fireplaces are your only source of heat in both main floors. Like I said: you are unaware of the state of the house.

SD: That is fair. I understand from your point of view as the tenant.

SC: It is cold at night/morning. I have no heat.

SD: Again I accept your notice of move out. Your paying cycle is from the 15th. You provided notice yesterday.

SC: All you do is accuse us of things going wrong. We are all mature adults here.

SD: I'm just letting you know what the process of move out is as per the RTA.

SC: I don't need this added stress in my life. We are here for medical reasons.

SD: I agreed. I apologize for the stress.

> SC: As per... the illegal apartment downstairs? My mom got swindled on that apartment. You know it.
>
> SD: The house has been built in the 1940s. We purchased it this year, it's not an illegal basement. You provided notice which is one months notice. Your move out date will be November 15th. If you find something sooner please let me know.
>
> [emphasis added]

In her affidavit, SC wrote that following the Flood "AD made promises to send professional cleaners to the [basement suite]" but that this did not occur. She wrote that the "as a result of the text messages [she] received from [SD], [she] started looking for a new place for the family to live."

The tenants located a new place to live and notified SD on October 14, 2019 that the tenants would be vacating the rental unit on October 15, 2020.

The tenants stated that many of their personal belonging were still *en route* from Newfoundland and Labrador at the time the Flood occurred, and that due to the Flood and the uncertainty to the future of the tenancy the Flood caused, they delayed and re-directed this shipment to their new residence. They submitted an email dated October 7, 2019 between JC and the shipping company indicating that the cost these changes was $1,190.70. The tenants have also claimed for $85 for the cost of renting a U-Haul truck to move their possessions from the rental unit to the new residence.

Forwarding Address

The parties gave evidence on the timing of the service of the tenants' forwarding address during the hearings. However, at the September 15, 2020 hearing, the tenants withdrew their claim for the return of double the Deposits. Now they seek only the return of the Deposits. As such, the issue of the timing of the forwarding address is moot and I will not recount the parties' evidence on the matter, except to say that the landlords currently have the tenants' forwarding address.

Landlords' Position

The landlords argue that, by vacating the rental unit on October 14, 2019, the tenants breached the fixed term tenancy agreement. As such, they argued that they are entitled to recover lost income from the rental unit for the period of October 15, 2019 to

February 1, 2020 (when then rental unit was re-rented). They argued that they mitigated their losses by advertising the rental unit for re-rent as of October 16, 2020 (for $3,500 per month), and by reducing the amount of monthly rent sought to $2,950 in December 2019, when they were having difficultly locating a new renter.

The landlords also claim that the tenants left debris at the rental unit after they moved out, which required the landlord to hire a junk removal company costing $160. They submitted a copy of junk removal invoice dated October 18, 2020.

Additionally, the landlords allege that the tenants did not pay the water bill for the time they resided at the rental unit. Per the tenancy agreement, the tenants were to pay for water. The landlord submitted a municipal water bill dated October 17, 2019 for July 1 to September 30, 2019 totaling $134.30.

Tenants' Position

The tenants argue that their vacating the rental property prior to the end of the fixed term of the tenancy agreement was warranted on one of three separate bases:

1) The tenancy was frustrated by to the Flood.
2) The parties mutually agreed to end the tenancy.
3) The landlord breached materials terms of the tenancy agreement by:
    a. Failing to fix the heating problems; or
    b. Failing to remediate the Flood in a timely fashion.

On all of these bases, the tenants argue that the tenancy ended on October 6, 2019, in accordance with the Act. The tenants argued that they are therefore not liable for any rental arrears or any amount of rent that would have been payable after October 15, 2020. Their obligation to compensate the landlord ended when the tenancy ended.

The tenants argue that the landlords have not shown that the tenants are responsible for causing the Flood and are therefore not liable for the cost of junk removal (they say the junk was debris from the Flood, including carpet that CR removed at the request of AD) or the water bill, as these are expenses resulting from the Flood.

The tenant argue that they provided their forwarding address to the landlords and are entitled to the full return of the Deposits.

Additionally, the tenants argue that the cost of delaying and redirecting the shipment of their belongings to their new residence and the cost of renting the U-Haul truck should

be paid by the landlords, as their move was precipitated by the landlords' breach of the Act and tenancy agreement.

Analysis

At a prior hearing, both parties' counsel indicated that they believe credibility of the parties would be essential to determining these applications. With the greatest respect to parties' counsel, for the bulk of the matters at issue, I disagree. I base this on my review of the undisputed evidence and the relevant portions of the Act and Policy Guidelines, I find that even if I accepted the tenants' affidavits and evidence on cross-examination in their entirety and discounted the landlords' affidavit evidence and evidence on cross-examination in their entirety, or *vice versa,* the outcome of these applications would remain the same. This is why I have not recounted all aspects of the parties' evidence and responses to cross-examination questions in detail in this decision. Those portions of testimony are not relevant to the adjudication of this matter.

I come to this conclusion on based on an examination of the three bases on which the tenants have claimed that the tenancy has ended: 1) frustration; 2) mutual agreement; or 3) landlord's' material breach.

1. Was the Tenancy Agreement Frustrated by the Flood?

Policy Guideline 34 addresses the doctrine of frustration:

> A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.
>
> The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned.

I must first note that if either party was at fault for the Flood, the doctrine of frustration would not apply. For the purposes of this analysis, I will procede on the assumption that the Flood not the fault of any of the parties.

The parties provided a joint book of authorities in advance of the September 13, 2020 hearing, which included *Crown Point Hotel (1981) Ltd. v. British Columbia (Public Safety and Solicitor General),* 2007 BCSC 1048, in which the court concluded that tenancy was frustrated because the Fire Commissioner ordered that the use of several rental units be discontinued due to safety concerns. In this case, the court wrote:

> [64] The B.C. Court of Appeal in *KBK No. 138 Ventures Ltd. v. Canada Safeway Ltd.*, 2000 BCCA 295 at para. 12, adopted the following definition of frustration from Lord Simon of Glaisdale in *National Carriers Ltd. v. Panalpina Ltd.*, [1981] 1 All E.R. 161 at 175 (Eng. H.L.):
>
> > Frustration of a contract takes place when there supervenes an event (without default of either party and for which the contract makes no sufficient provision) which so significantly changes that nature (not merely the expense or onerousness) of the outstanding contractual rights and/or obligations from what the parties could reasonably have contemplated at the time of its execution that it would be unjust to hold them to the literal sense of its stipulations in the new circumstances; in such case the law declares both parties to be discharged from further performance.
>
> [65] The Court of Appeal went on at para. 13 of *KBK No. 138* to confirm the "radical change in the obligation" test for frustration, from *Davis Contractors Ltd.* v*. Fareham U.D.C.*, [1956] A.C. 696, [1956] 2 All E.R. 145 (H.L.), per Lord Radcliffe at p. 728-29 (A.C.):
>
> > So perhaps it would be simpler to say at the outset that frustration occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. *Non haec in foedera veni*. It was not this that I promised to do.
>
> [66] If the Landlord is faced with an order from the Fire Commissioner that is incompatible with his obligations under his residential tenancy agreements, this surely constitutes a "radical change in the obligation" unforeseen by the parties to the agreement. Once the agreement is frustrated, the tenancy ends by virtue of s. 44 of the *Residential Tenancy Act*.
>
> [emphasis original]

The parties also provided copies of prior RTB cases addressing frustration:

1) Decision 6105, in which the presiding arbitrator determined that the presence of bedbugs in the rental unit did not cause the tenancy to be frustrated, as the rental unit was not “made uninhabitable for the occupant due to the bed bugs” and the bed bugs did “not materially change the ability of the parties to fulfill the original agreement”.
2) Decision 6379, which involved five apartments affected by a fire and subsequent flooding caused by the bursting of fire-damaged pipes. The landlord testified that vacant possession of the rental units was required to properly remediate them. The presiding arbitrator determined that the fire and resulting water damage was an “unforeseen event”, that the remediation required the removal of walls and ceilings within the apartment building, and that asbestos had been detected in the building, requiring some units to be sealed off completely. This was sufficient to show frustration.
3) Decision 6479, which involved a basement suite rental unit whose floor was covered with sewage water following a leak. The landlord did not attend the hearing. The presiding arbitrator found that the landlord refused to immediately clean up the sewage water and that the tenancy was frustrated by the flood.
4) Decision 1435, which involved a sewage leak into the basement of a single detached home followed by a second flooding. The remediation of the basement was onerous and delayed, and the tenant was not able to rent out the basement suite as he intended due to the damage caused by these floods. The tenant continued to live on the upper floor of the rental unit during the remediations. The presiding arbitrator did not find that the tenancy was frustrated, but rather ordered that the landlord compensate the tenant for loss of use of the basement suite during the time of the remediation.

Of the four RTB decisions provided by the parties, Decision 1435 shares the most similarities with the case at hand. Both involve the renting of a single detached home, with the basement suite being flooded and requiring extensive repairs or remediation. As with the presiding arbitrator in Decision 1435, I find that such facts do not give rise to frustration.

I find that the Flood and the ensuing remediation required did not “radically change” the obligations of the parties or cause the tenancy agreement to be “incapable of being performed”. The tenants were still able to reside in the rental unit following the Flood, albeit only on the upper floor. It is this fact which distinguishes the present circumstances from those in Decision 6479, which involved the flooding of the entire basement suite (the tenant could not retreat to any part of the rental unit while the remediation work was done).

I do not find that the Flood or the landlord failure to immediately remediate its damage caused the tenancy to become frustrated. The tenants could still reside in the rental unit following the Flood.

As such, the tenancy agreement was not frustrated.

2. Did the Landlords Materially Breach the Tenancy Agreement?

Section 45(3) of the Act allows tenants to end a fixed-term tenancy prior to the end of the term, if certain conditions are met. It states:

> **Tenant's notice**
> 45(3) 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.

Policy Guideline 8 address ending a tenancy agreement due to the breach of a material term. It states:

> 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:
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.

As stated above, the tenants argued that the landlords materially breached the tenancy agreement by failing to remediate the Flood and by failing to adequately address the heating issues in the rental unit. I note that the tenants are not alleging that the Flood itself is breach of a material term of the tenancy agreement, rather that it is the landlords' response to the Flood which constitutes the breach.

There is no document in evidence where the tenants notify that the landlords that they consider either the landlords' response to the Flood or the failure to address the heating issues to be a material breach of the tenancy or, more importantly, where the tenants

advise the landlords that, if these issues are not fixed by a certain date, that they will be terminating the tenancy. These steps are required in order for a tenant to be able to terminate a tenancy for a breach of a material term.

As such, I find that the tenants have not satisfied the requirements for ending the tenancy due to a breach of a material term of the tenancy agreement.

Accordingly, the tenancy cannot have ended due to a breach of a material term by the landlords.

3. Did the Parties Mutually Agree to End the Tenancy?

The parties submitted text message chains between AD & SC and between SD & SC following the Flood. In her submissions, SK stated that these exchanges indicated that the parties mutually agreed to end the tenancy as of October 6, 2019 or, in the alternative, on November 15, 2019.

Section 44(1)(c) of the Act allows for parties to mutually end a tenancy. It states:

> **How a tenancy ends**
> **44**(1) A tenancy ends only if one or more of the following applies:
> (c) the landlord and tenant agree in writing to end the tenancy;

There is no requirement that the mutual agreement take any specific form, it is only required to be in writing. I find that an exchange of text messages is sufficient to satisfy this writing requirement.

Based on my review of the text messages between SD and SC, if find that the parties entered into a mutual agreement to end the tenancy on November 15, 2019. There is no explicit statement to this effect in the conversation, rather I look to the conversation as a whole, and to the conduct of the parties following the conversation, to see if an agreement was made. Based on the text message exchange, I find that the tenants were determined to end the tenancy agreement as soon as possible following the Flood and the (in their opinion) inadequate manner in which the landlords had addressed the Flood and their complaints about the washing machine and the heat.
In the text messages, SD acknowledges these complaints, but does not agree to end the tenancy immediately. He states that the tenants are “on the hook for rent” and that they may end the tenancy on 30 days’ notice. He continues that the tenants’ “paying

cycle is from the 15th", that they "provided notice yesterday [October 5, 2019]," and that their "move out date will be November 15th."

The Act does not allow tenants to end a fixed term tenancy by giving 30 days' notice. As such, I understand SD's comments to be an invitation to the tenants to end the fixed term tenancy on terms other than what is provided for in the Act (essentially, he has proposed terms upon which he would agree, on behalf of the landlords, to enter into a mutual agreement to end the tenancy on November 15, 2019).

I find that by moving out in advance of the end of the end of the fixed term, the tenants accepted SD's offer to mutually end the tenancy on November 15, 2019. I do not find that the fact that they moved out prior to this date to indicate that they did not accept SD's offer to mutually end the tenancy. Rather, I find that they vacated as soon as they found another unit to rent, notwithstanding that the tenancy was to continue until November 15, 2020.

I see no basis in the materials submitted the parties to find that the parties agreed to mutually end the tenancy agreement immediately. I do not understand SD's statement that he "accepts [the tenants'] notice of moveout" to mean that he accepted it was effective immediately and relieved the tenants from having to pay rent for October 15 to November 15, 2019. The balance of the conversation makes it clear that the SD intended that the tenants pay this amount.

There is nothing in the text message conversation between AD and SC which indicates that the parties mutually agreed to end the tenancy immediately. As section 44(1)(c) requires that such agreements be in writing, I find that any conversation between the tenants and AD immediately after the Flood could not have contained a valid mutual agreement to end the tenancy.

As such, I find that the parties mutually agreed to end the tenancy on November 15, 2019. Accordingly, the tenants are responsible for paying the final instalment of rent ($4,200).

4. Effect of the Mutual Agreement on the Parties' Claims

The majority of the landlord's monetary claim is for loss rent following the departure of the tenants. As stated above, I find that the tenants must pay the landlord $4,200 in rent for the October 15 to November 15, 2019. As the parties mutually ended the tenancy on November 15, 2019, I find that the tenants did not breach the fixed term tenancy by

leaving prior to the end of the fixed term. As such, the landlord is not entitled to compensation for the duration of the term of the fixed tenancy after November 15, 2019. I dismiss this portion of the landlords' claim, without leave to reapply.

Similarly, the tenants have claimed for the cost renting the U-Haul truck ($85) and for having to delay and reroute the delivery of their possessions. As I have found the parties agreed to end the tenancy, the tenants are not entitled to recover these amounts.

The remaining claims of the landlords left to adjudicate are:

1) Cleaning bill at the end of the tenancy ($160); and
2) Unpaid water bill ($70).

The remaining claims of the tenants left to adjudicate are:

1) return of the Deposits; and
2) cleaning costs at the start of the tenancy ($765).

5. Junk removal and Water bill

The tenancy agreement indicates that water is not included in the monthly rent. The tenancy started on August 12, 2019, which is approximately mid-way through the water billing cycle. The *pro rata* cost of water for the billing period is $1.48. I find that, pursuant to the tenancy agreement, the tenant is obligated to pay for water for the period of August 12, 2019 to September 30, 2019 (49 days). The amount of the water bill that the tenants are responsible for pay is $72.52 (49 days x $1.48).

The water bill is not, as contended by the tenants, due to the Flood. It covers a period of time prior to the Flood. As the landlords have claimed $70 as compensation for the unpaid water bill, I award them that amount.

The parties did not conduct a move-in condition inspection report. I cannot say what the state of the rental unit was at the start of the tenancy. I accept the CR's uncontroverted evidence that the junk left on the residential property was comprised of goods removed from the rental unit which were damaged by the Flood and that AD directed him to leave those materials there.

As such a decline to award the landlords any amount in connection with the junk removal.

6. Cleaning

The landlord did not complete a move-in condition inspection report at the start of the tenancy as required by section 23 of the Act. As such, I do not have an undisputed contemporaneous document evidencing the condition of the rental unit at the start of the tenancy. This is to the landlords' detriment.

Based on the text messages exchanged between SC and the cleaner, I accept that the tenants paid $765 for cleaning of the rental unit shortly after they moved in. I accept that the photos submitted into evidence by the tenants are indicative of the overall condition of the rental unit at the start of the tenancy.

I am not persuaded that the text message exchange between AD and SC indicates that the rental unit was properly cleaned at the start of the tenancy. I accept SC's explanation as to why she did not raise the cleanliness issue in the exchange.

Section 32(1) of the Act requires the landlords to provide the tenants with the rental unit in a state of decoration and repairs that makes it suitable for occupation by the tenants. I find that the condition the rental unit was provided to the tenants does not meet this standard and that extensive cleaning was required.

As such, I order the landlords to reimburse the tenants the cost of the cleaning ($765).

7. The Deposits and Filing Fee

As the parties have each been partially successful in their applications, I find that each should bear the cost of their own filing fees.

I have not found that the tenants caused any damage to the rental unit during the tenancy. As such the Deposits must be returned to the tenants.

8. Offset of Monetary Orders

I have ordered that the tenants pay the landlords $4,270, representing the unpaid water bill and rent for October 15 to November 15, 2020.

I have ordered that the landlords pay the tenant $4,865, representing the return of the Deposits and compensation for the cleaning costs incurred at the start of the tenancy.

These amounts should be offset against one another. Section 72(2) of the Act explicitly permits the Deposits to be used in such a manner.

Accordingly, I order that the landlords pay the tenants $595.

Conclusion

Each party has been partially successful in their applications. I have made offsetting monetary orders. I attach a monetary order for $595 in favour of the tenants, which may be enforced in the Provincial Court (Small Claims) of British Columbia.

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: December 24, 2020

Residential Tenancy Branch