



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1441 ST. GEORGES LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MNDL-S MNDCL-S FFL
For the tenants: AS FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$2,450.00 for liquidated damages, for damages to the rental unit, site or property, and recover the cost of the filing fee. The tenants applied for authorization to assign or sublet the rental unit, and to recover the cost of their filing fee.

The hearing began promptly at 11:01 a.m. Pacific Time on March 8, 2022, which allows the parties the additional 1 minute to listen to the pre-recorded instructions of what to expect at the hearing. Attending the hearing at 11:01 a.m. were three representatives for the landlord, agent GL (agent), building manager BS (building manager) and assistant property manager TE (assistant). The hearing process was explained to the agent, building manager and assistant and an opportunity to ask questions about the hearing process was provided. Words utilizing the singular shall also include the plural and vice versa where the context requires. After the mandatory 10-minute waiting period, the tenants' application was **dismissed without leave to reapply** at 11:11 a.m. pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3 apply and state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I note that the tenants were provided with a copy of the Notice of a Dispute Resolution Proceeding dated November 2, 2021 (Notice of Hearing) after filing their application dated October 31, 2021. The tenants, however, did not attend the hearing at the required start time. As a result, the hearing continued with consideration of the landlord's application only. The tenants' filing fee is not granted as they failed to attend the hearing at the required time to present the merits of their application.

After 14 minutes, tenant FG (tenant) called into the hearing late and after their application had already been dismissed without leave to reapply. The tenant was affirmed, and the hearing process was explained. The tenant testified that they thought the RTB would be calling them. The tenant was advised that the teleconference instructions were located on the Notice of Hearing and clearly indicate that the tenant must call into the hearing as follows:

Hearing Information

Date: **Tuesday, March 8, 2022**

Time: **11:00AM Pacific Time**

This hearing will be conducted by TELEPHONE CONFERENCE CALL. Please use one of the following phone numbers and access code below to join the Telephone Conference Call.

Do not call more than 5 minutes prior to start time

1. Phone a number below at the time of the conference start:

(604) 899-1159(Vancouver)

1 (888) 458-1598(Elsewhere in BC - Toll free)

2. Enter the Access Code: [xxxxxx]#

3. Say your FULL NAME and press #

[Access code removed for privacy reasons]

The tenant was advised that they could fully respond to the landlord's application but that I would not be considering the tenant's application that had already been dismissed without leave to reapply. I find the tenants failed to exercise reasonable due diligence by reading what I find to be the basic hearing information listed above. Furthermore, I find the tenants had since November 2, 2021, to be prepared to call into the hearing held on this date, March 8, 2022. I also find that a reasonable person would have called into the

RTB if they had any questions between November 2021 and March 2022 regarding the hearing information or format of the hearing.

Preliminary and Procedural Matters

The parties were informed that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

This decision will be emailed to both parties at the email addresses listed on the applications before me.

The agent confirmed that the name of the landlord was incorrect and pursuant to section 64(3)(c) of the Act, I have amended the landlord's application to reflect the correct legal name of the landlord company.

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 15, 2021 and was scheduled to revert to a month-to-month tenancy after May 31, 2022. Monthly rent was \$2,300.00 per month and due on the first day of each month. The tenants also paid a security deposit of \$1,150.00, which the landlord continues to hold.

The agent testified that the tenants provided their written notice that they would be vacating early as of October 31, 2021, when they provided their written notice dated September 29, 2021.

The tenancy agreement indicates the following in terms of liquidated damages:

If the Tenant ends the term tenancy before the end of the original term as set out above, the sum of \$ 2,300 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty to cover the administration costs of re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the rental unit and the residential property and damages as a result of loss of rental income due to the Tenant's breach of the terms of this Agreement.

The landlord and tenants initialled each page of the tenancy agreement and signed and dated the tenancy agreement. The landlord is seeking the \$2,300.00 amount for the tenants breaching the fixed-term tenancy plus \$50.00 to repair wall damage.

The landlord provided an invoice for a wall repair for a different rental unit, as a result, that portion of their claim was dismissed during the hearing due to contradictory evidence, without leave to reapply.

Regarding liquidated damages, the tenant claims that the landlord agreed to waive the liquidated damages if the tenants could find a tenant to rent the rental unit. The landlord submitted a document, which reads in part:

Lease Break

The tenants decided to move out of the unit prior to the one-year tenant agreement was completed. agreed to this with a lease break liquidated damages which was the equivalent to one month's rent. The tenants had asked if they found someone would we waive the liquidated damages. We agreed. The tenants then did produce a candidate to tenant their unit. They did not want to sublet they wanted that these new tenants take over their unit. Again we agreed to this.

Upon checking the proposed tenants credit history they were found to both have poor credit. After consulting with the property manager (EW) we declined the proposed tenants to the current tenants.

[Personal information removed to protect privacy]

Although the tenant wanted to present the merits of their application, the tenant was advised that their application had already been dismissed without leave to reapply as noted above.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the tenants breached section 2 of the tenancy agreement, which I find clearly indicates that if the tenants end the tenancy prior to the original term of the tenancy agreement that the tenants would be required to pay \$2,300.00 in liquidated damages.

Secondly, I find the tenants provided insufficient evidence that the landlord waived their right to the liquidated damages, as I find the landlords retain the right to not accept a potential tenant if the potential tenant has poor credit, which I find the document submitted supports.

Given the above, I find the landlord has met the burden of proof and that the tenants must pay the landlord \$2,300.00 for liquidated damages pursuant to tenancy agreement clause 2.

As the landlord's application was successful, I grant the landlord the filing fee pursuant to section 72 of the Act, in the amount of \$100.00.

I find the landlord has established a monetary claim of **\$2,400.00**, comprised of \$2,300.00 for liquidated damages plus the \$100.00 filing fee. Pursuant to sections 38 and 67 of the Act, I authorize the landlord to retain the tenants' entire \$1,150.00 security deposit towards the \$2,400.00 amount owing. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlord in the amount of **\$1,250.00**.

Conclusion

The tenants' application has been dismissed without leave to reapply as indicated above and the filing fee is not granted for the tenants as a result.

The landlord's application is partially successful.

The landlord is authorized to retain the tenants' security deposit of \$1,150.00 towards the claim of \$2,400.00 established and is granted a monetary order of \$1,250.00 for the balance owing by the tenants to the landlord.

The monetary order will be emailed to the landlord only for service on the tenant, if necessary. Should the landlord require enforcement of the monetary order, the order must be first served on the tenants with a demand for payment letter and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenants are advised that they could be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 8, 2022

Residential Tenancy Branch