



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$3,900.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double their security deposit and the recover of the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 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.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to any compensation under the Act?
- If yes, are the tenants also entitled to the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2020 and reverted to a month-to-month tenancy after July 31, 2021. Monthly rent was \$1,900.00 per month and due on the first day of each month. The tenant paid a security deposit of \$950.00 at the start of the tenancy, which I will address later in this decision.

The tenants are seeking the return of their November 2020 rent of \$1,900.00 plus double their security deposit of \$950.00 for a total of \$3,800.00 plus the \$100.00 filing fee.

The landlord submitted a copy of the Mutual Agreement dated October 14, 2020 (Mutual Agreement), which was signed by both parties and stated that the tenancy would end on October 15, 2020 at 7 p.m. In the Mutual Agreement the parties agreed to the following with all personal information redacted for privacy reasons:

EXHIBIT 3
(Respondent)

Mutual Agreement to End a Tenancy
#RTB - 8

* THIS AGREEMENT IS BASED ON TENANT PAYING THE LANDLORD AN AGREED SETTLEMENT FEE OF ONE MONTHS RENT \$1,900 + THE LANDLORD RETAINS THE EXISTING HALF MONTH RENTAL DEPOSIT OF \$950 - BY 6:00 PM - WED 14TH OCT 2020

THIS IS A MUTUAL AGREEMENT BETWEEN [redacted] **DONE**

LANDLORD:
Full name of Landlord or Landlord's Agent (if entry is a business name, use 'last name' field box to enter the full legal business name)
[redacted] [redacted] J. [redacted] BY [redacted]
last name first name middle name(s)
Address of Landlord or Landlord's Agent
[redacted] [redacted] BC [redacted] INTERAC
suite or site number street number street name city province postal code
[redacted] [redacted] [redacted]
home phone business phone

AND

TENANT:
Full name(s) of Tenant(s):
[redacted] [redacted] [redacted]
last name first name middle name(s)
[redacted] [redacted] [redacted]
last name first name middle name(s)
Address of Tenant(s) ... ADDRESS TO BE VACATED UNDER THIS AGREEMENT:
[redacted] [redacted] BC [redacted]
suite or site number street number street name city province postal code
[redacted] [redacted] [redacted]
home phone business phone

The tenant(s) hereby agrees to vacate the above-named premises/site at:
[redacted] a.m. ☒ p.m., on the 15TH day of OCTOBER, 2020.

The parties recognize that the tenancy agreement between them will legally terminate and come to an end at this time. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: "The landlord and tenant agree in writing to end the tenancy."

DATED THIS 14th DAY OF October 2020

SIGNED BY: [redacted] [redacted] [redacted]
Landlord or Landlord's Agent Tenant Tenant

FOR MORE INFORMATION
RTB website: www.gov.bc.ca/landlordtenant
Public Information Lines 1-800-665-8779 (toll-free) Greater Vancouver 604-660-1020 Victoria 250-387-1602

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#RTB-8 (2019/04)

In the above Mutual Agreement the parties both signed the Mutual Agreement dated October 14, 2020, which confirms that the tenancy was to end on October 15, 2020 at 7:00 p.m. and that the tenants agreed to pay the landlord \$1,900.00 and surrender their \$950.00 security deposit.

There is no dispute that the tenants provided their written notice to end the tenancy dated September 2, 2021 with an effective vacancy date listed as October 31, 2021, however the tenants signed the Mutual Agreement after providing their written notice to end the tenancy, which I will address later in this decision.

The male tenant testified that they signed the Mutual Agreement as the male tenant received a job offer in Toronto that paid more and that the male tenant could not turn down. The tenant claims he was threatened by the landlord so had to sign the Mutual Agreement.

The tenant was asked if he was forced with a gun to sign the Mutual Agreement to which the tenant replied, "no". The tenant was asked how they were threatened by the landlord. The tenant testified the landlord said to the tenant on September 3, 2021 in the garden, "Hey stop accusing of us anything if you want this process to go smoothly." The landlord stated that they do not recall saying that but testified that if something was said, it was to prove that our vehicles did not touch, as claimed by the tenant.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

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 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what 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.

Based on the above, I find the tenants have failed to provide sufficient supporting evidence in support of their entire monetary claim and have failed to meet all four parts of the test for damage and loss. I have reached this finding based on the following.

Firstly, the tenants are attempting to rely on the argument that they suffered duress and were forced to sign the Mutual Agreement. *Duress* is defined as follows:

"any unlawful [threat](#) or [coercion](#) used... to induce another to act [or not act] in a manner [they] otherwise would not [or would]".

Black's Law Dictionary (6th Ed.)

As a result, I find duress is pressure exerted upon a person to coerce that person to perform an act they ordinarily would not perform. In the matter before me, I am not convinced that the tenants suffered duress whatsoever. I find that the tenants signed the Mutual Agreement willingly as the Act did not provide any other way for the tenants to end a fixed-term tenancy earlier than July 31, 2021. I base my finding on section 45(2) of the Act which applies and states:

45(2) 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.**

[emphasis added]

Given the above, I find the tenants were unable to end their tenancy by providing written notice earlier than July 31, 2021. In addition, I find the tenants signed the Mutual Agreement because they had a job offer in Toronto and made the choice to agree to paying \$1,900.00 as a penalty to the landlord for breaking the fixed-term lease, and

surrendered their \$950.00 security deposit as part of the same Mutual Agreement, which I find is a binding contract between the parties.

Consequently, I find the tenant's claim has no merit and fails in its entirety. Therefore, I dismiss the tenant's application in full without leave to reapply due to insufficient evidence from the tenants to support all 4 parts of the test for damage or loss described above.

I do not grant the filing fee as this application has no merit.

The tenants are bound by the Mutual Agreement/contract they signed with the landlord. Accordingly, I find the tenants have no right towards any portion of their security deposit as it was surrendered lawfully to the landlord.

Conclusion

The tenant's application is dismissed in full without leave to reapply due to insufficient evidence.

The filing fee is not granted.

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 1, 2022

Residential Tenancy Branch