Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlords applied for a monetary order in the amount of $10,557.00, which actually states, $10,164.00 below, for damages to the unit, site or property, for money owing for compensation under the Act or regulation, for unpaid rent or utilities, for authorization to retain the tenants' security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

The hearing began on January 4, 2022. Attending the teleconference hearing were the two landlords and the two tenants. All parties gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing and my findings. Words utilizing the singular shall also include the plural and vice versa where the context requires.

After 61 minutes on January 4, 2022, the hearing was adjourned to allow additional time for the parties to present evidence and testimony. On April 8, 2022, this matter was reconvened and ultimately concluded. Given the above, an Interim Decision dated January 4, 2020 was issued, which should be read in conjunction with this Decision.

Neither party raised concerns regarding the service of documentary evidence or their ability to review those documents before the hearing. As a result, I find the parties were sufficiently served in accordance with the Act.

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.

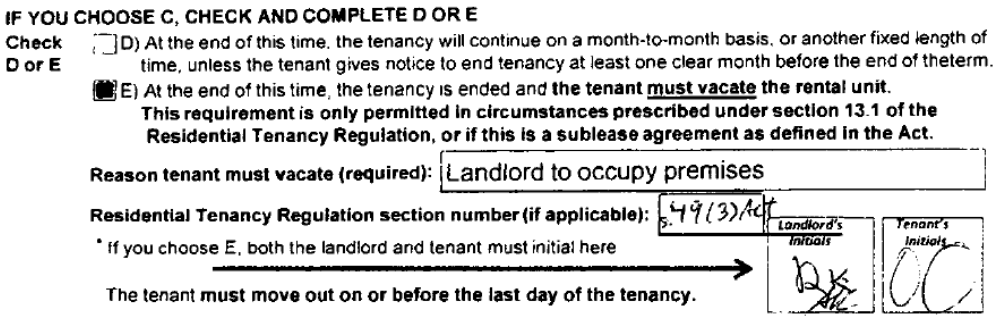
In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' combined deposits under the Act?
- Are the landlords entitled to the recovery of the cost of 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 September 15, 2020 and was scheduled to convert to a month-to-month tenancy after July 2, 2021. Monthly rent was $3,080.00 per month and was due on the first day of each month. The tenants paid a security deposit of $1,540.00 and a pet damage deposit of $500.00 for a total in combined deposits of $2,040.00 (combined deposits). Regarding what was agreed to by the parties at the end of the tenancy, under "E" of the tenancy agreement it reads as follows:



IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check D or E

☐ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of theterm.

☒ E) At the end of this time, the tenancy is ended and **the tenant must vacate the rental unit.**
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): Landlord to occupy premises

Residential Tenancy Regulation section number (if applicable): s. 49(3) Act

* If you choose E, both the landlord and tenant must initial here

Landlord's Initials | Tenant's Initials

The tenant **must move out on or before the last day of the tenancy.**

The landlords' monetary claim is comprised as follows:

	Bill date	Bill Amount	Tenants Paid
Fortis Electric Utilities			
September 22, 2020 - November 15, 2020	November 17, 2020	146.23	146.23
(MINUS a $56.16 (=40+16.16) brake on utilites)		-56.16	-56.16
November 16, 2020 - January 11, 2021	January 12, 2021	161.55	161.55
January 12, 2021 - March 18, 2021	March 19, 2021	194.51	
March 19, 2021 - May 20, 2021	May 21, 2021	111.91	
May 21, 2021 - July 12, 2021 (53 days-12 days after June 30=41 days; 41/53x285.72 billed amt)	July 14, 2021	221.029	
TOTAL Fortis Electric Utilities		**779.07**	
Fortis Gas Utilities			
Sept. 10, 2020 - October 6, 2020	October 7, 2020	$35.59	$35.59
October 7, 2020 - November 5, 2020	November 5, 2020	120.42	161.01
November 6, 2020 - December 6, 2020	December 7, 2020	166.91	120.42
December 7, 2020 - January 8, 2021	January 8, 2021	186.87	186.87
January 9, 2021 - February 5, 2021	February 5, 2021	169.59	
February 5, 2021 - March 9, 2021	March 9, 2021	195.74	
March 10, 2021 - April 9, 2021	April 9, 2021	121.91	
April 9, 2021 -May 7, 2021	May 7, 2021	40.28	
May 8, 2021 - June 7, 2021	June 7, 2021	59.16	
June 8, 2021 - July 8, 2021 (23/33 days to June 30; 22/33x35.37=23.58)		23.58	
TOTAL Fortis Gas Utilities		**$1,120.05**	
City Kelowna Utilities			
July 16, 2020 - September 16, 2020 (63 days)	October 6, 2020	$136.27	45.42
September 17, 2020 - November 18, 2020 (62 days)	December 6, 2020	106.93	106.93
November 18, 2020 -January 20, 2021 (63 days)	February 6, 2021	106.51	
January 20, 2021 - March 12, 2021 (51 days)	April 6, 2021	105.51	
March 12, 2021 - May 18, 2021 (51 days)	June 6, 2021	96.49	
May 18, 2021 - June 30, 2021 (missing) (estimate)		50	
TOTAL City Kelowna Utilities		**$601.71**	
TOTAL UTILITIES CHARGES		**$2,500.83**	
Rent, Sec. Dep, Pet Dep			
Pet deposit (non-refundable)		500	500
Security deposit		**1540**	1540

RENT		
Sept. 15, 2020 - Oct 15, 2020 rent	3080	3080
October 15 - October 31, 2020 rent	1540	1540
November rent: $3080	3080	3000
		80
		80
Dec. rent: $3080	3080	3000
Jan. rent: $3080	3080	3000
		80
Feb. rent: $3080	3080	3000
		80
March rent: $3080	3080	3000
		80
Apr. rent: $3080	3080	
May rent: $3080	3080	
June rent: $3080	3080	
TOTAL RENT DURING LEASE	29,260	20,020
SHORTFALL IN RENT DUE FROM TENANT	**9,240**	
TOTAL UTILITIES DURING LEASE	2,501	
Total utilites paid by tenant (total pd-total rent pd)	2,786.85	
SHORTFALL IN UTILITIES DUE FROM TENANT	- **286.02**	
TOTAL SHORTFALL in RENT, UTILS OWED BY TENANT	**8,953.98**	
LESS SECURITY DEPOSIT, TOTAL NET RENT& UTILS OWED	**7,413.98**	

Amount Barkers Owe

9,240	rent shortfall
- 286.02	utilities shortfall
8,954	Amt owed as per lease

Plus additional costs following tenant's repudiation:

191	cost of changing locks
60	Cost of re-Advertising premises for rent
100	cost of this application
520.86	Replace and install kitchen tap (tap+parts+plumber)
100	Carpet cleaning est.
164	Replace fridge crisper
74	Replace dishwasher soap dispenser lid
10,164	TOTAL AMT OWED as per lease
-1540	Less security deposit
-3080	Less mitigation
5,544	TOTAL NET AMT OWED

Although the tenants' combined deposits total $2,040.00, I note that the landlords indicated in their calculation above that the pet deposit was "non refundable". As the Act

does not permit the landlords to make any of the deposits non-refundable, I will address that issue later in this Decision.

Regarding the landlord's claim for unpaid utilities, the tenancy agreement indicates the following is included in the monthly rent, laundry, refrigerator, stove and oven, window coverings and parking for 2 vehicles. Utilities for water, electricity, heat and gas are not included in the monthly rent.

According to the document submitted in evidence by the landlords, which I find they are bound by as they submitted the document, which includes the following summary:

Amount Barkers Owe	
9,240	rent shortfall
- 286.02	utilities shortfall
8,954	Amt owed as per lease
Plus additional costs following tenant's repudiation:	
191	cost of changing locks
60	Cost of re-Advertising premises for rent
100	cost of this application
520.86	Replace and install kitchen tap (tap+parts+plumber)
100	Carpet cleaning est.
164	Replace fridge crisper
74	Replace dishwasher soap dispenser lid
10,164	TOTAL AMT OWED as per lease
-1540	Less security deposit
-3080	Less mitigation
5,544	TOTAL NET AMT OWED

Given the above, I find the total amount claimed by the landlords is **$10,164.00,** which I will reduce by $3,080.00, for a reduced amount of **$7,084.00** as the landlords confirmed during the hearing that they were able to minimize their loss by receiving rent for June 2021 from new tenants after they were able to re-rent the rental unit after the tenants vacated early from the fixed-term tenancy.

The landlords testified that they believe the tenants breached the fixed-term tenancy agreement and vacated before the July 2, 2021 end date listed on the written fixed-term tenancy. The landlords testified that they were able to mitigate their losses by $3,080.00 received from new tenants and testified that the keys were not returned by the tenants until July 31, 2021. The parties disputed when the tenants vacated the rental unit. The

tenants claim they vacated the rental unit on April 2, 2021, while the landlords claim that the tenants failed to return the rental unit keys until July 31, 2021.

The landlords presented an email dated February 3, 2021, which is from tenant LB to the landlords and reads in part as follows:

> Hi Susan. Not sure if you guys have solidified your summer plans but we would be interested in extending our stay through the summer and well into the fall if that is might work out for you guys.
> If you can let us know ASAP so we can make other arrangements as needed.
>
> Thanks

On February 10, 2021, the landlords responded by email to tenant LB. That email reads in part as follows:

> Hi Loretta, We have a lot of things up in the air, but we do plan to be back in the house in July. The kids (and me too) are really looking forward to being back. We have plans to spruce the house up a bit before the kids start back in school again in Kelowna.
>
> We've been grateful to have the home occupied and cared for and hope you've enjoyed it there so far.
>
> If you do need to make other arrangements, we might be able to agree to let you move out earlier. Possibly as early as April 9. I will likely have to be in Kelowna around that time anyway for work related reasons, and could do the move-out inspection then, if you were to make other plans. I don't know the exact date yet but should know within the next few weeks.
>
> Randy tells me you're building a house! That's pretty exciting! What part of Kelowna is it in?
>
> Susan

On March 1, 2021, at 2:24 p.m., the landlords wrote the following email to the tenants, which reads in part as follows:

> Loretta, My work-related trip to Kelowna is being postponed from April 9, to early to mid- June instead. So I don't have plans to be there anymore in April. But, if you do
>
> plan to move out before early July, we'd be grateful for one clear month notice, and will plan to be there at a mutually agreed time for the move-out inspection.
>
> Hope all is well with you and at the house.

Less than one hour later, on March 1, 2021 at 3:14 p.m. the tenants responded by email to the landlords, which reads in part as follows:

> Hi Susan. All is well here. Seems like spring is around the corner!
>
> We have something secured for June 1 but are looking at a place tomorrow night that is for April 1. I'll let yo know ASAP how that turns out but I'm not optimistic on it so....
> As soon as we know for sure I'll let you know a date as we still need to organize storage, movers and some time to clean.

Two days later on March 3, 2021, the landlords responded to the tenants via email, which reads in part as follows:

> Hello Loretta, ok, please just keep us posted; as mentioned we'd be grateful for one clear month's notice. It would work really well for us if we could be in the house by about June 8, since then our daughter and I could stay there while we're back there for my work and then we could maybe move some of our things back that trip too. Though if you want it for the month of June to allow for easier moving, that is of course what your lease says so that's available to you if that is of help to you.
>
> Susan

On March 14, 2021 at 5:04 p.m., the tenants emailed the landlords, which reads in part as follows:

> Hi Susan. Hope all is well.
>
> We were fortunate enough to manage to find a house to rent while our house is being built.
>
> They are looking at the lease starting April 1 and I know you wanted a clear months notice but was hoping you would consider 3 weeks. This would take us to April 7th.
>
> This is a great opportunity for us as houses are a bit of a challenge to find as you well know. We would very much appreciate yours and Randy's cooperation for the transition.
>
> We have certainly enjoyed our time in your home and can assure you that was and is well cared for.
>
> Thank you.

On March 16, 2021 at 11:19 a.m. the landlords replied to the tenants by email which reads in part as follows:

Hi Loretta,
We are glad that you were able to find a place while your new home is being built.

We understand your situation and although this causes us some financial issues, we are doing our best to work with you by allowing you out of the lease early. In an effort to work with you, assuming this goes smoothly then we do not intend to pursue all rents until the end of June, 2021. As we trust you can understand, we do require the rent to be paid until the end of April. I could be in Kelowna on or around May 6, 2021 to do the mvoe-out inspection. We ask that all keys, and any copies that were made, all be returned to us at that time, and that all leaves be removed from the yard if that hasn't already been done. We also ask that a forwarding address be provided at that time as security deposit would be returned several days after the inspection.

Please confirm if May 6 is ok for you.

Thank you

Just 3 minutes later, the tenants replied by email to the landlords which reads in part as follows:

Hi Susan. Last email you sent you indicated that you would like a clear months notice which would take us to April 14. We would be willing to concede this. Let me know.

On March 16, 2021 at 5:34 p.m., the landlords replied to the tenants via email, which reads in part as follows:

Loretta, I'm overwhelmed at the moment with a lot going on... I'll discuss with Randy and he'll reply when he's able, but what we meant was one calendar month. Please know we truly are being as flexible as we can be. We own several rental properties and in over 20 years have only let someone break a lease once. So we really are doing our best but as you can understand we have our own situation as well.

Randy has only limited access to email so it may take him a few days to respond. I will chat with him again but I think he's going to say April 30. We weren't proposing to insist that rent be paid beyond that even though we wouldn't do the move out inspection until May 6 so that was another concession on our part plus we thought maybe that would allow your move to be less stressful.

We've been grateful to have you there, and hope your home building is going smoothly.

Best,
Susan

On March 16, 2021 at 6:08 p.m. the tenants replied to the landlords by email which reads in part as follows:

> Hi Susan. Totally understand and to be fair I am a bit overwhelmed as well as frustrated because as you know we had full intentions of staying until July 1 or even longer if needed until you introduced the idea of leaving as soon as April 9th. This basically opened up the window for us to start searching for something to suit our situation. Subsequently you indicated one clear month which I understood to be 30 days.
> As finding appropriate accommodation that will allow a short term lease is with a dog and a yard, we are feeling very lucky to have found something to accommodate us and that we needed to jump on this opportunity. We truly feel that April 15th is a good and fair compromise as our lease with the new place starts on April 1. There is obviously the option to have someone rent this place from April 1 to July 3 and we would be more than happy to be accommodating to that as well for showings etc.
>
> No particular rush in getting back to me as I understand Randy's limited access to email.
>
> Best regards
>
> Loretta Barker

On March 24, 2021 at 4:21 p.m., the landlords replied to the tenants by email, which reads in part as follows:

> Hello Loretta, Thank you for your patience. When I was in Kelowna in late 2020, you asked if you could stay
> at the house into fall 2021 or longer because your new house won't be ready to move into yet in early July. This is when the idea of a date other than early July was introduced. But we have plans to return in July. In an attempt to accommodate your situation, since you needed accommodation, we were trying to be responsive by considering letting you break the lease to ease your transition into the next place. We'd understood you were looking for a place for June 1. We always try to be fair, so please rest assured that is our mindset. But the fact is that you signed a lease until July.
>
> If we can't agree on April 30 and a May 6 move-out inspection, and that we will all be cordial and positive with no issues between us or at the house, then the default is that we have a lease until July 3. To be honest, I'd like to see the lease respected. If anything, splitting the difference: April, May and June = 3 months' rent, so until mid- May would be 1.5 months, and a fairer split than April 30. I had a health issue so we do need the April rent.
>
> We are trying to be fair here by considering letting you out of the lease, and would be grateful for the flexibility we are showing to be acknowledged and appreciated. We hope we can move forward in a positive spirit. If this isn't possible then it's good that we have the default.
>
> Best regards
> Randy

The landlords sent another email to the tenants dated March 31, 2021 at 8:35 p.m. which reads in part as follows:

> Hello Loretta
>
> You indicated that you would give us a full months notice of your intention to vacate. According to landlord and tenant legislation the months notice must be given the day before the day in the month that rent is payable. As rent is paid per calendar month, notice must be given by no later than the 2nd last day of the month before, to be effective one month later. This means that notice given on March 14 requires that you pay full rent for April. We ask that you please provide April rent. Since the lease goes until the end of June we feel that we are being reasonable and generous in the circumstances. We would be grateful for your cooperation on this
>
> Best regards
>
> Randy.

The tenants then sent an email to the landlords dated April 2, 2021 at 3:44 p.m., which reads in part as follows:

> Hi Susan. We have finished the move and the final clean.There is a couple of tire racks that are just outside by the shed that didn't fit so we will grab those in the next day or two. Let me know who you would like us to give the keys to.
>
> Thank you.

Given the above, the landlords testified that there was no meeting of the minds to end the fixed-term early as the tenants went from requesting an extension of the tenancy through the summer and into the fall to then wanting to end the tenancy as early as April 2021.

The tenants stated that they acted based on the landlords being open to the idea of the tenants vacating early as long as they were given a clear month of notice. The tenants could not deny that their dates were changing in the email communication described above. Although the tenants claimed they paid rent until April 15, 2021, their email supports that they surrendered their combined deposits towards rent owing, which I will address later in this Decision.

Regarding the outgoing condition inspection, the landlords testified that they offered the tenants two different inspection times and the tenants failed to attend either appointment. The landlords also stated that the tenants did not say they couldn't attend and made reference to the April 13, 2021 email from tenant LB to the landlords which states in part under 2 as follows:

> "…As we were very comfortable with the cleanliness of the home when we moved out, I see no reason to attend any move out inspection…"
> [reproduced as written]

I will address how this stance impacts the combined deposits of the tenants later in this Decision.

The landlords stated that they had to change the locks to the rental unit as the tenants did not return the keys to the landlords and instead left them with a neighbour. The landlords have claimed $191.00 as a result and submitted a receipt dated April 12, 2021 in the amount of $191.10 to support this portion of their claim. In addition, the landlords have claimed $60.00 for the cost to re-advertise the premises for rent; however, submitted a receipt for $52.50 for advertising. The landlords also provided a copy of the new tenancy agreement, which supports that the landlords mitigated their loss by re-renting the rental unit for $3,080.00 per month effective May 28, 2021.

Regarding damages, the landlords have claimed $520.86 for the cost to replace and install a kitchen faucet including the faucet, parts and plumber. The landlords referred to the incoming condition inspection report and the outgoing condition inspection report in support of this portion of their claim. The incoming condition inspection report indicates that for the kitchen tap it was "D" for damaged and states "Chipped faucet" at the start of the tenancy in September 2020. The outgoing condition inspection report that was not dated by the landlords, states "D" for damaged and states "part missing from faucet leaking profusely." The landlords were asked how old the home was and the landlords stated it was built in 1989. The landlords stated the faucet was not the original faucet and that the current faucet was 7 years old. The tenants stated that the faucet never worked correctly and would have been at least 15 years old and not 7 as claimed by landlords.

Regarding carpet cleaning, the landlords have claimed $100.00 for the cost to clean the carpets that they stated were left in dirty condition by the tenants. The landlords did not supply photo evidence to support the condition of the carpets at the end of the tenancy. The landlords referred to the condition inspection report which state the following the following in part:

Incoming	Kitchen	Floor/carpet	Poor	Water Damaged
Outgoing	Kitchen	Floor/carpet	(blank)	(blank)
Incoming	Living Room	Floor/carpet	Fair	Carpet stains
Outgoing	Living Room	Floor/carpet	(blank)	(blank) however under

				ceiling it reads “carpets not steam cleaned” and DT for Dirty.
Incoming	Dining Room	Floor/carpet	Stained	Several stains
Outgoing	Dining Room	Floor/carpet	(blank)	(blank)
Incoming	Main bathroom	Floor/carpet	Fair	(blank)
Outgoing	Main bathroom	Floor/carpet	(blank)	(blank)
Incoming	Second bathroom	Floor/carpet	Good	(blank)
Outgoing	Second bathroom	Floor/carpet	(blank)	(blank)
Incoming	Master bedroom	Floor/carpet	Fair	(blank)
Outgoing	Master bedroom	Floor/carpet	(blank)	(blank) however under ceiling it reads “carpets not steam cleaned” and DT for Dirty.
Incoming	Bedroom 2	Floor/carpet	Poor	Well worn/stained
Outgoing	Bedroom 2	Floor/carpet	(blank)	(blank) however under ceiling portion “carpet not steam cleaned” and DT for Dirty.
Incoming	Bedroom 3	Floor/carpet	Poor	Well worn
Outgoing	Bedroom 3	Floor/carpet	(blank)	(blank) however under ceiling portion “carpet not steam cleaned” and DT for Dirty.
Incoming	Bedroom 4	Floor/carpet	Stained	Well worn
Outgoing	Bedroom 4	Floor/carpet	(blank)	(blank) however under ceiling portion “carpet not steam cleaned” and DT for Dirty.

I will address the details of the incoming and outgoing condition inspection reports later in this Decision. The landlords referred to their Addendum to the tenancy agreement which states under 21 the following:

21. When vacating the premises, they are to be left in a clean and structurally sound condition, in at lest as good or better condition as noted on initial inspection.

I will address the wording of 21 later in this Decision.

The tenants referred to their email in evidence dated September 18, 2020 to the landlords, which states in part as follows:

> I would like it noted that we were disappointed in the state of the house in regards to cleanliness. The carpet has clearly not been professionally cleaned and there was garbage left under the sink as well as other signs that the house was not professionally cleaned. We will have to clean prior to moving in and this certainly tainted the inspection experience. Having said that We are fine to carry-on and will initial the lease as requested and I'm sure once we get our furniture in and sorted everything will be fine.

Regarding the fridge crisper, the landlords have claimed $164.00 for the cost to replace a fridge crisper. The landlords testified that the fridge was purchased in 2013 and also referred to an Amazon receipt for $163.75, which listed a crisper drawer. The landlords also referred to the outgoing condition inspection report which lists a crisper drawer as missing. The tenants testified that one crisper drawer had always been missing since the start of the tenancy.

Regarding the dishwasher soap dispenser lid, the landlords have claimed $74.00 for the cost to replace a missing dishwasher soap dispenser lid. The landlords referred to the outgoing condition inspection report that lists a dishwasher soap dispenser lid missing. The landlords also provided a screenshot of an online shopping cart showing a soap dispenser lid in the amount of $58.08. The tenants claim the dishwasher soap dispenser lid was never inside the dishwasher and that the dishwasher was very old. The landlords did not present evidence on the age of the dishwasher during the hearing.

The tenants' response to the landlords' claim for damages was that the tenants were willing to meet with "Cory" to do the outgoing condition inspection. Regarding carpet cleaning, the tenants stated that they did steam clean the carpets with their own steam cleaner but did not have the carpets cleaned professionally. The tenants stated that the carpets had not been professionally cleaned at the start of the tenancy, which I will address later in terms of the incoming condition inspection report.

The tenants presented a letter from their lawyer dated September 20, 2021 (Demand Letter), which reads in part as follows:

We are assisting Loretta and Gary Barker in regard to the above-mentioned matter. We have received and reviewed the Dispute as well as miscellaneous email correspondence between you and the Barkers.

Based on the Dispute and email correspondence, it is my client's position that an early termination was agreed upon and represented to them by you. As such, they relied upon and acted on such representation and terminated this tenancy in accordance with such representations. At law, contractual interpretation is not confined to the four corners of the page, and Canadian courts have taken the position that all aspects of contractual dealings be considered in contract disputes. Furthermore, the Supreme Court of Canada in *C.M. Callow Inc. v. Zollinger*, reiterated the duty of each party to conduct contractual activities in good faith. By making representations to my clients regarding early termination, and then asserting these were not made or intended to be binding after they have relied on such representations breaches this obligation of good faith in contracts. This position is supported by the email correspondence between you and my clients.

On February 10, 2021 by email from Susan Kootnekoff ("Email 1"), she first addressed the possibility of an early termination of this tenancy:

> "If you do need to make other arrangements, we might be able to agree to let you move out earlier. Possibly as early as April 9. I will likely have to be in Kelowna around that time anyway for work related reasons, and could do the move-out inspection then, if you were to make other plans. I don't know the exact date yet but should know within the next few weeks."

My client's were appreciative of the willingness to negotiate an early termination of the lease and began looking at their options. It is important to note, that we understand that you did not commit

to early termination at this stage. At this point in time, you indicated that early termination was open for discussion and would likely be acceptable.

On March 1, 2021, Loretta emailed you notice that they had secured a place for June 1, 2021 but also found a potential place commencing on April 1, 2021. Susan responded via email on March 3, 2021 ("Email 2") saying:

"Hello Loretta, ok, please just keep us posted; **as mentioned we'd be grateful for one clear month's notice. It would work really well for us if we could be in the house by about June 8, since then our daughter and I could stay there while we're back there for my work and then we could maybe move some of our things back that trip too.** Though if you want it for the month of June to allow for easier moving, that is of course what your lease says so that's available to you if that is of help to you." **[emphasis added]**

It was at this time, that you indicated a clear intention to allow for early termination of this tenancy with a clear month's notice. Furthermore, you represented in Email 1 that April 9th was a potential date and did not refute this date in this subsequent emai.. After receiving this correspondence, my client relied on these representations and acted in accordance with your written statements.

On March 14, 2021, Loretta emailed Susan providing notice that a new place had been found. She also requested that you accept three weeks' notice, instead of a clear month. We understand that this request was denied. On March 16, 2021 Loretta then provided you with thirty days' notice in accordance with Email 2 stating that the lease would terminate on April 14, 2021 in accordance with your representations. It is important to note that you did not define a clear month's notice as a calendar month's notice in Email 2. Thus, my clients relied on the ordinary meaning of month's notice to be thirty days. It was at this time, you ignored your prior representations and attempted to enforce the full term of this tenancy.

Based on the above, my client's acted strictly in accordance with your representations. They looked for a new place once you indicated that you would consider early termination. Once they mentioned they had a couple of options (without anything formal), you mentioned that a "a clear month's notice" would be acceptable. My client's acted on that representation and proceeded with signing a new tenancy. It is bad faith to induce my clients to end a tenancy early and then, once ended, attempt to enforce the full term of such tenancy. This is a violation of the duty to contract in good faith, and for such bad faith actions, punitive damages may be claimed among other damages.

As you are no doubt aware, contractual interpretation is not strictly based on the contents of the contract, especially in landlord and tenant situations where there is unequal bargaining power. We also understand that you have a significant number of rental properties, thus, the courts and the Residential Tenancies Branch are more likely to give deference to tenants in these types of situations. To strictly rely on the contract without consideration of your written representations to my clients is simply an incorrect interpretation of contract law (for example, see *Sattva Capital Corp. v Creston Moly Corp.* (2014 SCC 53) among others).

Notwithstanding the above, my clients continue to appreciate your initial willingness to work with them, even if it is shrouded by this unexpected aggressive stance and filing of the Dispute. As such, since there was miscommunication regarding the "clear month's notice" they would be willing to pay you the remaining rent and utilities owed for the full month of April in exchange for discontinuance of this dispute.

If this is unacceptable, my client's will proceed with defending the Dispute and claim damages, including, without limitation, punitive damages for bad faith, and legal costs and other expenses against you. My client's firmly believe that the Residential Tenancies Branch will enforce their interpretation as part of their role is to protect tenant's from sophisticated landlords that attempt to take advantage of the unequal bargaining power.

Thank you for your anticipated cooperation in this matter.

I will address this Demand Letter later in this Decision.

The tenants claimed they provided more than a clear month of notice to the landlords and were asked where that was in their evidence. The tenants referred to a March 16,

2021 email at 6:08 p.m. with the subject in “Re: Notice” in which the tenants claim that the email made it clear that the tenants were giving their one-month notice to vacate on April 1, 2021; however, the actual email reads as follows:

> Hi Susan. Totally understand and to be fair I am a bit overwhelmed as well as frustrated because as you know we had full intentions of staying until July 1 or even longer if needed until you introduced the idea of leaving as soon as April 9th. This basically opened up the window for us to start searching for something to suit our situation. Subsequently you indicated one clear month which I understood to be 30 days.
> As finding appropriate accommodation that will allow a short term lease is with a dog and a yard, we are feeling very lucky to have found something to accommodate us and that we needed to jump on this opportunity. We truly feel that April 15th is a good and fair compromise as our lease with the new place starts on April 1. There is obviously the option to have someone rent this place from April 1 to July 3 and we would be more than happy to be accommodating to that as well for showings etc.
>
> No particular rush in getting back to me as I understand Randy’s limited access to email.
>
> Best regards
>
> Loretta Barker

The landlords summarized their position is that this matter relates to a fixed-term lease and that the landlords did not release the tenants from the obligations of the fixed-term tenancy. The landlords also stated that the tenants were not clear in giving any notice and changed their minds several times based on their email evidence. The landlords stated that the Act applies, and the tenants cannot change the terms of the fixed-term lease without written permission and that no written permission was granted.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the 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 the matter before me, the landlords bear the burden of proof to prove all four parts of the above-noted test for damages or loss.

The first matter I will deal with is what I find is the landlords attempt to make the pet damage deposit non-refundable as part of the tenancy agreement. In the tenancy agreement submitted in evidence, the landlords wrote beside the pet damage deposit, **$500 non-refundable.** I find that section 5 of the Act applies and states:

> **This Act cannot be avoided**
>
> **5**(1) **Landlords and tenants may not avoid or contract out of this Act or the regulations.**
>
> (2) **Any attempt to avoid or contract out of this Act or the regulations is of no effect.**
>
> [emphasis added]

Given that section 38 of the Act sets out how security deposits and pet damage deposits are to be dealt with under the Act, **I caution** the landlords not to attempt to make either deposit non-refundable at the start of the tenancy in the future. If the tenant agrees in writing at the end of the tenancy to surrender either deposit, that is permitted and would be the decision of the tenant to do so. Otherwise, the remedy for the landlord is to apply for dispute resolution claiming against either deposit. Given the above, I find the landlords continue to hold the tenants' combined deposits of $2,040.00, which I find have accrued $0.00 in interest since the start of the tenancy in keeping with the Regulation. These combined deposits will be accounted for later in this Decision.

In terms of the tenants making the decision not to attend the outgoing inspection report, section 36 of the Act applies and states that the rights of the tenants to their security deposit and pet damage deposit are extinguished if they were provided two opportunities to attend and did not participate on either occasion. Based on the evidence before me, I find the tenants extinguished their right towards the combined deposits, which I will be offsetting from the landlords' claim. I find the tenants failed to attend the scheduled inspection by stating in their April 13, 2021 email the following:

> "…As we were very comfortable with the cleanliness of the home when we moved out, I see no reason to attend any move out inspection…"
>
> [reproduced as written]

I will now address the remainder of the landlords' application.

Based on the documents submitted by the landlords, I find they are seeking $10,164.00 before the combined deposits have been deducted and $3,080.00 in rent mitigation have been applied, which reduces the total claim before me to **$5,044.00.**

Amount Barkers Owe	
9,240	rent shortfall
- 286.02	utilities shortfall
8,954	Amt owed as per lease
Plus additional costs following tenant's repudiation:	
191	cost of changing locks
60	Cost of re-Advertising premises for rent
100	cost of this application
520.86	Replace and install kitchen tap (tap+parts+plumber)
100	Carpet cleaning est.
164	Replace fridge crisper
74	Replace dishwasher soap dispenser lid
10,164	TOTAL AMT OWED as per lease
-1540	Less security deposit
-3080	Less mitigation
5,544	TOTAL NET AMT OWED

To reiterate, my total of $5,040.00 differs from the landlords' total of $5,544.00 above as I find the landlords were not authorized to attempt to make the pet damage deposit non-refundable at the start of the tenancy.

Regarding the fixed-term tenancy, I am satisfied that the landlords have provided sufficient evidence that the tenants did not have written permission from the landlords to break the fixed-term tenancy. I agree with the landlords that there was no meeting of the minds in terms of ending the fixed-term earlier than July 2, 2021, due to the tenants changing their minds in their correspondence and being vague at best.

Furthermore, I disagree with the tenants' Demand Letter claiming that the landlords were not acting in good faith as I find the tenants lacked clarity on a specific date and went from asking for an extension to the tenancy to the other extreme by requesting to be released from the fixed-term tenancy early. I find the tenants failed to confirm April 1, 2021 as the end of tenancy date as claimed by the tenants and that the email dated March 16, 2021 from the tenants was vague and was written to benefit the tenants only without any written response from the landlords confirming that they agreed to April 1, or April 15 of 2021 as a tenancy end date. Given the above, I find the fixed-term

tenancy did not change based on the tenants being vague and failing to get a written response to their request to vacate early on a specific, agreed-upon date.

Section 7(2) of the Act requires that a landlord that claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss and I find that the landlords did comply with section 7(2) of the Act by minimizing their loss by securing new tenants effective May 28, 2021, in the amount of $3,080.00 for the remaining months of the tenancy. Therefore, I find the tenants breached 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]

Furthermore, section 52 of the Act applies and states:

> **Form and content of notice to end tenancy**
>
> **52 In order to be effective, a notice to end a tenancy must be in writing and must**
>
> (a) **be signed and dated by the** landlord or **tenant giving the notice,**
>
> (b) **give the address of the rental unit,**
>
> (c) **state the effective date of the notice,**
>
> [emphasis added]

I find the tenants failed to give a proper, written notice as required by section 52 of the Act. Therefore, I find the tenants breached the fixed-term tenancy without written permission to do so and as a result, I find the tenants owe the landlords a total of $9,240.00 less the $3,080.00 amount obtained from the new tenants, resulting in a balance owing of rent arrears in the amount of **$6,160.00**.

Regarding damages, I find the home was built in 1989 as indicated by the landlords and by the end of the tenancy in 2021, the home was 32 years old. I note that the tenants

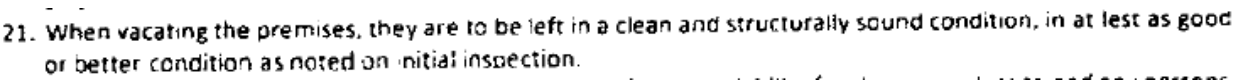
disagreed with the landlords' testimony in terms of the age of the fridge, faucet and dishwasher. I also note that RTB Policy Guideline 40 – *Useful Life of Building Elements* (Guideline 40) sets out the following useful life as follows:

> Fridge = 15 years
> Faucet (plumbing fixture) = 10 years
> Dishwasher = 10 years

I have also considered that the landlords did not complete the outgoing condition inspection report correctly by writing portion of the outgoing condition in the incorrect columns and therefore I find the landlords lacked attention to detail in completing the outgoing condition inspection report. Furthermore, I find that the flooring in the condition inspection report were listed as:

> Kitchen = Poor (water damaged) at incoming and blank at outgoing
> Living Room = Fair at incoming and blank at outgoing
> Dining Room = Stained at incoming and blank at outgoing
> Main bathroom = Fair at incoming and blank at outgoing
> Master bedroom = Fair at incoming and blank at outgoing
> Bedroom 2 and 3 = Both Poor (well worn) at incoming and blank at outgoing
> Bedroom 4 = Stained (well worn) at incoming and blank at outgoing

Given the above, and the email from the tenants to the landlord referred to above, I am not satisfied that the rental unit was in a reasonably clean condition at the start of the tenancy, yet the landlords wrote in the Addendum under 21 the following:


21. When vacating the premises, they are to be left in a clean and structurally sound condition, in at lest as good or better condition as noted on initial inspection.

Section 37(2)(a) of the Act **does not** require tenants to leave the rental unit in better condition as noted in the condition inspection. Section 37(2)(a) of the Act does apply and state:

> **Leaving the rental unit at the end of a tenancy**
>
> **37**(2) **When a tenant vacates a rental unit, the tenant must**
>
> (a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,** and
>
> [emphasis added]

Given the above, I find the landlords have failed to provide sufficient evidence and convince me that the tenant breached section 37(2)(a) of the Act. Therefore, I dismiss the landlords claim for the following due to insufficient evidence, without leave to reapply:

1. Carpet cleaning
2. Replace and install tap/faucet
3. Replace fridge crisper
4. Replace dishwasher soap dispenser.

I have reached this decision as I find the incoming inspection confirmed there was a flaw with the tap/faucet at the start of the tenancy and given that the age of the faucet of 7 years was disputed by the tenants, I find that it is just as likely as not that the faucet could have been 10 years old and met the useful life of a faucet. Therefore, I find the faucet has depreciated by 100% and that the landlords are not entitled to any compensation for the faucet.

As I find the tenants breached the fixed-term tenancy and vacated before the July 2, 2021 date listed on the fixed-term tenancy, I find that the tenants are liable for the costs to rekey the rental unit in the amount of **$191.00** as claimed as the tenants did not return the keys to the landlords and instead gave the keys to a third party. Similarly, I find the tenants are also liable for the costs to re-rent the rental unit by way of advertising costs in the amount of **$52.50,** which is the amount listed on the advertising receipt. I dismiss any amount higher for these items due to insufficient evidence, without leave to reapply.

As the landlord's claim had some merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **$6,503.50** comprised of $6,160.00 in rent arrears, $191.00 for lock rekeying, $52.50 for advertising, plus the $100.00 filing fee. Pursuant to sections 38 and 67 of the Act, I grant the landlords authorization to retain the tenants' full combined deposits of $2,040.00, which have accrued $0.00 in interest, in partial satisfaction of the landlords' monetary claim. Pursuant to section 67 of the Act, I grant the landlords a monetary order for the balance owing by the tenants to the landlords in the amount of **$4,463.50**.

Conclusion

The landlords' claim is partly successful.

The landlords have established a total monetary claim of $6,503.50. The landlord has been authorized to retain the tenants' combined deposits of $2,040.00, which have accrued $0.00 in interest, in partial satisfaction of the landlords' monetary claim pursuant to sections 38 and 67 of the Act.

The landlords are granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlords in the amount of $4,463.50. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenants.

The monetary order may be served and enforced via email as per section 62(3) of the Act. I caution the tenants that they can be held liable for all costs related to enforcement of the monetary order under the Act.
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: April 28, 2022

Residential Tenancy Branch