



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mosaic Livingstone Two Limited
Partnership and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants YF (the tenant) and DX and the landlord attended the hearing. The landlord was represented by director AR (the landlord) and coordinator AG. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord served the notice of hearing and the evidence (the materials) in person. The tenants confirmed receipt of the materials and that they had enough time to review the materials.

The tenants did not serve the response evidence.

Based on the testimony offered by both parties, I find the landlord served the materials in accordance with section 89(1) of the Act.

Rule of Procedure 3.15 states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

Per Rule of Procedure 3.15, I excluded the tenants' response evidence.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed-term tenancy from September 01, 2021 to August 31, 2022. Monthly rent of \$2,295.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$1,147.50 and a pet damage deposit of \$1,147.50 were collected. The security and pet damage deposits (the deposits) were returned to the tenants. The tenancy agreement was submitted into evidence. It states:

2. This tenancy starts on September 01, 2021 and ends on August 31, 2022.

Utilities Addendum

5. The landlord may charge a monthly charge of \$60.00, which the tenant acknowledges is the reasonable cost of the landlord to administer and allocate the indirect utilities payment and for the use of the landlord's equipment and facilities for such purpose.

ADDITIONAL TERMS

5. Move in / Move out fees are payable in advance, in the amount of \$150.00 Move in.

The tenant returned the keys to the landlord on September 14, 2021, prior to the end of the fixed term.

The landlord confirmed receipt of the tenants' forwarding address in writing on September 09, 2021. The tenant confirmed her current address has not changed.

Both parties agreed the tenant paid September 2021 rent and the deposits and reversed the electronic payment.

The landlord is claiming September 2021 rent in the amount of \$2,295.00 and the flat utilities fee in the amount of \$64.00. The landlord affirmed the tenancy agreement addendum wrongly states the utilities fee is \$60.00, as the correct amount is \$64.00 and the tenants are aware that this is the correct amount. The landlord stated that the indirect utilities are water and sewage, and the landlord incurs these costs regardless of consumption.

The landlord is claiming loss of rental income and compensation for the utilities fee for the months of October and November 2021 in the total amount of \$4,718.00 (\$2,295.00+\$64.00 x 2 months), as the landlord only re-rented the rental unit in the end of November 2021 for a tenancy starting on December 01, 2021. The landlord re-rented the rental unit for \$2,295.00 per month.

The landlord received the tenants' notice to end tenancy on September 08, 2021. The landlord cleaned the rental unit after the tenants move out and started advertising it on September 15, 2021, asking for \$2,295.00 per month. The landlord advertised the rental unit on Facebook Marketplace, Craigslist, Zumper, Kijiji and Pad Mappers. The landlord used the services of marketing professionals and emailed the advertisement to prospective tenants. The landlord did not reduce the asking price because he was asking for the regular market price.

The landlord is claiming the move in fee in the amount of \$150.00, as the tenants did not pay this amount.

The tenant testified she did not pay the amounts claimed because the tenants only occupied the rental unit for a few hours, as the rental unit is very noisy, and the location informed by the landlord is not correct. The tenants did not visit the unit in person before signing the rental agreement because they did not live in British Columbia. The tenant did not submit an application for dispute resolution because she does not know how to do so.

The landlord submitted a monetary order worksheet indicating a monetary claim in the total amount of \$7,227.00.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Unpaid rent and utilities

I accept the landlord's uncontested testimony and the tenancy agreement that the tenants must pay monthly rent of \$2,295.00 on the first day of the month and the tenants did not pay rent due on September 01, 2021.

Based on the tenancy agreement, I find the tenants agreed to pay the monthly utilities fee in the amount of \$60.00. I find the tenancy agreement is more relevant than the landlord's testimony.

Based on the landlord's uncontested testimony, I find the tenants did not pay the utilities fee due on September 01, 2021.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's uncontested testimony and the tenancy agreement, I find the tenants are in arrears for September 2021 rent in the amount of \$ 2,295.00 and \$60.00 for the utilities fee.

As such, I award the landlord \$2,359.00 for September 2021 rent and utilities.

Loss of rental income

Based on the undisputed testimony offered by both parties and the tenancy agreement, I find the tenants were aware the tenancy was for a fixed term ending on August 31, 2022 and the tenants ended the tenancy early on September 14, 2021, contrary to section 45(2)(b) of the Act:

(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.

(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.

(emphasis added)

The tenants could have submitted an application to the RTB regarding the noise levels and location issues or provided the landlord with a reasonable period to comply with material terms of the tenancy agreement.

I find that due to the tenants' failure to pay rent until the end of the fixed term tenancy agreement on August 31, 2022, the landlord incurred a loss of rental income from October 01 to November 30, 2021.

RTB Policy Guideline 3 sets conditions for loss of rental income claims. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be

secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the landlord's uncontested testimony, I find the landlord acted to minimize his losses. However, per section 7(2) of the Act and RTB Policy Guidelines 3, 5 and 16, the landlord should have taken additional steps to minimize his loss of rental income, such as lowering the rental amount asked.

The landlords should have reduced the asking price in accordance with the following table:

Period	Rent reduction (% over the full rent amount)	Rent after reduction
Until September 30, 2021	Full rent amount	\$2,295.00
From October 01 to 31, 2021	Reduction of 10%	\$2,065.50
From November 01 to 30, 2021	Reduction of an extra 10%, total 20% reduction	\$1,836.00

As such, I find the landlord suffered a loss of rental income in the amount of \$3,901.50 from October 01 to November 30, 2021.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the landlord proved, on a balance of probabilities, that he suffered a loss of \$60.00 per month from October 01 to November 30, 2021 for utilities because the tenants breached the fixed term tenancy agreement by moving out early. I find the landlord's loss for unpaid utilities from October 01 to November 30, 2021 is \$120.00.

Thus, per section 7 of the Act and considering RTB Policy Guidelines 3, 5 and 16, I award the landlord loss of rental income and compensation for unpaid utilities from October 01 to November 30, 2021 in the total amount of \$4,021.50.

Move in fee

Based on the landlord's uncontested testimony and the tenancy agreement, I find the tenants agreed to pay the move in fee in the amount of \$150.00 and did not pay this fee.

I find the tenants breached clause 5 of the additional terms of the tenancy agreement by not paying the move in fee in the amount of \$150.00 and the landlord incurred a loss in this amount.

As such, I award the landlord \$150.00 in compensation for this loss.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Item	\$
Unpaid rent and utilities (September 2021)	2,359.00
Loss of rental income and utilities (October 01 to November 30, 2021)	4,021.50
Move in fee	150.00
Filing fee	100.00
Total	6,630.50

Conclusion

Pursuant to sections 7, 26, 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$6,630.50.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: June 01, 2022

Residential Tenancy Branch