



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL, MNRL, MNDL, MNDCL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlords' application and amendment dated May 4, 2022. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and amendment dated May 4, 2022. All parties confirmed receipt of each other's evidentiary materials.

Preliminary Issue – Amendment to Landlord's Application and Updated Monetary Order Worksheet dated May 21, 2022

The landlords originally filed their application on November 4, 2021 requesting a monetary order for unpaid rent in the amount of \$1,325.00. On May 4, 2022, the landlords filed a formal amendment to add additional claims. In section 2 of the Landlord Request to Amend a Dispute Resolution Application form, the landlords requested to amend two amounts: the landlords requested \$1,105.22, which was the amount of the security and pet damage deposit, but an additional monetary amount for interest, and \$3,291.13 in unpaid rent for November 2021 to January 15, 2022.

Although the form states “Please attach a Monetary Order Worksheet”, the landlords did not, and instead stated that they wanted to add a new monetary claim, and in the space where the new amount was to be indicated, the landlords simply typed “To be submitted before June hearing”. On May 20, 2022, the landlords submitted a new Monetary Order Worksheet dated May 21, 2022, along with their supporting evidence for claims now totalling \$29,395.00. No new amendments were filed by the landlord after the May 4, 2022 amendment.

Residential Tenancy Policy Guideline #23 sets out of the sequence of events that must be followed in amending an application, including the following steps:

- 1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);*
- 2. the applicant submits this form and a copy of all supporting evidence to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;*
- 3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;*
- 4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and*
- 5. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.*

Although the landlords did file an amendment on May 4, 2022, the landlords did not follow the steps above to file any further amendments despite submitted in evidence a new monetary order worksheet with updated amounts. In light of the fact that a party must know the case against them, and have a reasonable opportunity to respond, I am not satisfied that the landlords’ amendment dated May 4, 2022 included the attached Monetary Order Worksheet dated May 21, 2022. This Monetary Order Worksheet was submitted later, which is not in accordance with the steps listed above. I note that the

landlords disregarded the instructions on the Amendment form where the landlords were to specify the new amount requested, and to attach a Monetary Order Worksheet.

As the landlords failed to follow the proper steps in amending their claim to include the items listed on the Monetary Order Worksheet dated May 21, 2022, and given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I informed the landlords in the hearing that I was unable to consider the claims listed on the Monetary Order Worksheet dated May 21, 2022. I informed the landlords that I would consider the two updated amounts listed in their amendment dated May 4, 2021, plus recovery of the filing fee.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for monetary losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 15, 2020. Monthly rent was set at \$1,325.00, payable on the first of the month. The landlords still hold a security deposit of \$600.00, and a pet damage deposit of \$500.00.

The two parties attended a dispute resolution hearing on July 5, 2021, which primarily dealt with a 2 Month Notice to End Tenancy for Landlord's Use. I was the Arbitrator for that hearing, and I had allowed the tenants' application to cancel the 2 Month Notice, and ordered that the tenancy continue until ended in accordance with the Act.

The two parties appeared before a different Arbitrator on September 15, 2021 to deal with another application by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord's Use. The result of that hearing was a settlement agreement whereby the landlords had agreed to withdraw the 2 Month Notice to End Tenancy dated July 27, 2021, and both parties agreed to end tenancy by way of mutual agreement on January 15, 2022. In the settlement agreement, the landlords agreed to provide one month's compensation, which the landlords had satisfied by not collecting rent for October 2022.

The two parties also agreed that a move-out inspection would be scheduled for January 15, 2022.

The landlords testified that the tenants failed to follow through with the conditions of the settlement agreement and moved out early and without proper notice on November 30, 2021. The landlords received an email the evening of November 29, 2021 from CB that the tenants had vacated the rental unit, and were requesting the return of their deposits. The landlords testified that no rent was paid for November 2021.

The landlords testified that they attend the rental unit on November 30, 2021 to find the door unlocked, and a set of keys left on the kitchen counter. The landlords testified that they had attempted to schedule a move-out inspection with the tenants, but were informed that the tenants had already left the area and could not attend.

The landlords are seeking a monetary order for the rent that would have been paid for the remainder of the tenancy, as well as an order allowing the landlords to retain the tenants' security and pet damage deposits plus interest since the tenants abandoned the rental unit, failed to provide a forwarding address, and did not attend the move-out inspection.

The tenants testified that they felt they had no choice but to move out early as they felt bullied by the landlords, and had managed to secure new housing. The tenants testified that they felt overwhelmed and stressed, and had agreed to the settlement agreement under duress. The tenants testified that they could not longer tolerate living there due to the multiple issues that took place during the tenancy, and that they could not attend a move-out inspection with the landlords as the relationship had become too tumultuous for the two parties to be in the same room.

Analysis

Section 44 and 45 of the *Residential Tenancy Act* states the following about how a tenancy may end:

- 44** (1)A tenancy ends only if one or more of the following applies:
- (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i)section 45 [*tenant's notice*];
 - (i.1)section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii)section 46 [*landlord's notice: non-payment of rent*];

- (iii)section 47 [*landlord's notice: cause*];
- (iv)section 48 [*landlord's notice: end of employment*];
- (v)section 49 [*landlord's notice: landlord's use of property*];
- (vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii)section 50 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Tenant's notice

45 (1)A tenant may end a periodic 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, and

(b)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.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. Despite the tenants' testimony that they had agreed to end the tenancy under duress, I find that the Arbitrator had clearly recorded that both parties had mutually agreed to end the tenancy on January 15, 2021 and also noted that "The

Landlords, their counsel, and the Tenants both acknowledged that they understood they were not required to enter into this agreement and that they understood the agreement was final and binding". I am not convinced that the tenants had agreed to end the tenancy under duress or coercion of any party.

The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required by section 45(1) of the *Act*. I, therefore, find that the tenants vacated the rental unit contrary to sections 44 and 45 of the *Act*. As the settlement agreement was reached on during the hearing on September 15, 2021, and as no written notice was provided by the tenants prior to November 29, 2021 that the tenants would be moving out, I find it reasonable for the landlords to have assumed that the tenants would have stayed and paid rent until January 15, 2021 as agreed upon. As the plan was for the landlords to occupy the home themselves, I do not expect that the landlords would have attempted to fill the vacancy for the remaining two and half months following the unexpected move out at the end of November 2021. I am satisfied that the tenants failed to comply with the *Act* and the settlement agreement reached between the parties, and as a result the landlords suffered a monetary loss equivalent to the two and half month's rent. Accordingly, I allow the landlords' monetary claim of \$3,291.13 for the lost rent.

The landlords also requested to keep the security and pet damage deposits as the tenants extinguished their right to claim these amounts after abandoning the rental unit, and failing to attend the move-out inspection. I am satisfied that failure of the tenants to provide proper notice to the landlords before vacating the rental unit constitutes an abandonment of the rental unit. Accordingly, the tenants' right to the return of their two deposits is extinguished.

As noted in Residential Tenancy Policy Guideline #17 about security deposits and set-offs:

"In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 [consequences for tenant and landlord if report requirements not met] of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.”

As the landlords are in possession of \$1,100.00 for the deposits, and as the landlords are entitled to a monetary award in the amount of \$3,291.13 for the lost rent, in accordance with the offsetting provisions of section 72 of the *Act*, I order that the deposits be set off against the award in partial satisfaction of the money owed. The landlords will be provided a monetary order for the remaining amount.

Although the landlords reference an additional \$5.22 in interest in their amendment, I note that there is no applicable interest that can be applied in this case. For further information, I refer the landlords to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/returning-deposits> .

As the landlords were successful with their application, I find that the landlords are entitled the \$100.00 filing fee paid for this application.

Conclusion

I allow the landlord's monetary claims as set out in the table below:

Loss of Rental Income for November 2021 to January 15, 2021.	\$3,291.13
Filing Fee	100.00
Less Deposits Held by Landlord	-1,100.00
Total Monetary Order to Landlords for remaining money owed	\$2,291.13

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenants(s) 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: July 06, 2022

Residential Tenancy Branch