



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL; MNSD, MNDCT, FFT

Introduction

This hearing dealt with the landlord's application, filed on December 27, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on January 13, 2022, pursuant to the *Act* for:

- authorization to obtain a return of the tenants' security deposit, pursuant to section 38;
- a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord, the landlord's husband, and the two tenants, tenant AH ("tenant") and "tenant SH" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 54 minutes from 1:30 p.m. to 2:24 p.m.

The landlord confirmed the names and spelling for her and her husband. The two tenants confirmed their names and spelling. The landlord and the tenant both provided their email addresses for me to send copies of this decision to both parties after this hearing.

The landlord confirmed that she co-owns the rental unit with her husband. She said that he was present at this hearing because he is her husband, and he co-owns the rental unit. She said that he was not her agent or her witness. He did not testify at this hearing. The landlord provided the rental unit address. She identified herself as the primary speaker for the landlord at this hearing.

The tenant identified herself as the primary speaker on behalf of both tenants at this hearing.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord, the landlord's husband, and the two tenants all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing and they wanted me to make a decision regarding both applications.

Both parties confirmed that they did not want to settle their applications, despite being offered multiple opportunities at the beginning and end of this hearing. Both parties discussed settlement at the beginning of this hearing. Both parties agreed that they were prepared to receive \$0 if they were unsuccessful in their applications, if that was my decision.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' application.

During this hearing, the landlord confirmed that she did want not to pursue her monetary claim for one month's rent compensation of \$2,500.00 from January 8, 2022 to February 8, 2022, against the tenants. I informed her that this portion of her application was dismissed without leave to reapply. She confirmed her understanding of same.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit?

Are the tenants entitled to the return of their security deposit?

Is either party entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

The landlord and the tenant agreed to the following facts. This tenancy began on September 8, 2021 and ended on December 14, 2021. Monthly rent in the amount of \$2,500.00 was payable on the 8th day of each month. A security deposit of \$1,250.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties and copies were provided by both parties, for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord on December 14, 2021, by way of the move-out condition inspection report. The landlord did not have written permission to keep any amount from the tenants' security deposit.

Landlord's Application

The landlord testified regarding the following facts. The rental unit is an old home that is well maintained and used by the landlords. It has high humidity and needs proper ventilation. The tenants required an electrician to replace 17 wall plugs at the rental unit. The tenants reported a mold problem but did not provide any pictures, as requested by the landlord. The landlord offered two appointments to meet in person with the tenants but did not receive a response. On November 11, 2021, the tenants

told the landlord that there was a problem with the house, they had an air quality test done, and the rental unit was not safe so they would obtain other accommodations. The landlord did not expect the tenants to obtain luxury beachfront accommodations. There was no flood or mold as per the landlord's inspector, that provided a report as evidence for this hearing. The tenants left their belongings in the house and no trades could come in during that time. The tenants provided a few days notice indicating they were leaving on December 14, 2021. The report from the landlord's professional indicated that the tenants had different living conditions and there may have been excessive house plants and windows closed at the rental property. The report also indicated that there were stains from sap from 40 years ago at the rental unit. The landlord seeks \$862.62 for unpaid utilities and Wi-Fi and one-month of unpaid rent of \$2,500.00 from December 8, 2021 to January 8, 2022. The landlord does not agree to pay for the tenants' moving or storage expenses. The landlord did not re-rent the unit to new tenants until "spring." The landlord could not perform any work in the month of December 2021 because the tenants did not leave the rental unit. The landlord could not start any work at the rental unit until "well into January" 2022. The landlord did not submit proof regarding re-rental of the unit or the delay due to the tradespeople.

The tenant testified regarding the following facts. The tenants moved out under "duress" after the mold report, which showed over 400,000 parts per million. The tenants only had 10 spider plants in the rental unit, which would not cause the above issue. There was no notice because they required storage. There was no offer from the landlord to fumigate or check the rental unit, while the tenants were staying at a hotel. The tenants did not stay at a five-star hotel, they stayed at a place that was \$50.00 more than the place recommended by the landlord. The landlord had notice, sat at the table with the tenants, and had air quality testing. This was a frustrated tenancy. The tenants dispute the landlord's claim for one month's rent compensation of \$2,500.00. However, the tenants agreed to pay \$862.62 for unpaid Wi-Fi and utilities to the landlord. The tenants did not pay rent to the landlord for December 2021, and do not agree to pay while they were occupying the rental unit from December 1 to 14, 2021. The tenants left the rental unit on November 16, 2021, but their furniture was still in the rental unit until December 14, 2021.

Tenants' Application

The tenant stated the following facts. The tenants moved into the rental unit on September 8, 2021. They viewed the property online and discussed mold. Tenant SH went to view the rental unit and smelled Pine Sol. A few days later, the tenants noticed mold, as it was cold and wet outside. The tenants had their own generator and air

purifier at the rental unit. The tenants' mold report shows that there were 400,000 parts of mold at the rental unit. Tenant SH got bronchitis, which would not go away. The tenants told the landlord that they had to move out and sent their mold report to the landlord and tenant SH left to stay in a hotel. The landlord was apologetic and said that she would help the tenants find a more affordable hotel. However, the landlord now claims that she had no notice, even though she was helping the tenants find a place, as per her emails to the tenants. Tenant SH found a short-term rental for six months and moved there on December 29, 2021. It took two weeks to find storage and on December 26, 2021, the tenants told the landlord. The landlord offered garage storage to the tenants, but it was too late. The landlord said she had to "renovate" the house, so the tenants could not go back to the rental unit. The tenants sent their costs to the landlord. The landlord then claimed that she wanted future rent from the tenants. Tenant SH found a long-term rental in March 2022. The tenants did not claim for cleaning costs. The tenants were served by the landlord with her application, and were hoping to settle their issues, but were unable to do so. The tenants then filed their own application later. The tenants refused to sign the document to end the tenancy because it was a "frustrated tenancy."

Tenant SH stated that the electrical outlet plugs were unsafe and upside down at the rental unit and it was a "fire hazard" as per the report.

The landlord testified regarding the following facts. She disputes the tenants' entire application, including hotel, moving, and storage costs. The landlord was sympathetic to the tenants' problem and acted because she thought it was a problem. The landlord retained an air quality professional seven days later, as soon as she could, and the expert found there was no problem and made a suggestion that it was due to the blinds and the plants. She never used Pine Sol to clean the rental unit. She is "positive" that tenant SH did not purchase any machine for the rental unit because she already had it in her possession from before. The landlord always cleans the rental unit between renters and the house is "immaculate." The landlord has not had any problems in 20 years, and no one has asked her to dry-clean their clothes. She is not sure why the tenants had a problem. The problem started when tenant SH first moved in. Tenant SH viewed the rental unit in August 2021 with the landlord's housekeeper and made her go around the entire house. The landlord did ozone treatment in the rental unit because of the covid-19 pandemic.

The tenant stated the following facts in response to the landlord's submissions. The tenants had no choice but to leave the rental unit after two months. The tenants are not faking or pretending. The rental unit was the "perfect place," but it got worse with the

smell. The mold test is from a “credible” company, so the tenants are not “lying.” The tenants got an email from the landlord offering to refund their last month rent for December 8, 2021 of \$2,500.00.

The landlord stated the following in response to the tenant’s response. The landlord was “sympathetic” to the tenants at first, but there was no problem. The landlord got the air quality test. The landlord is not willing to pay for the tenants’ hotel or dry-clean expenses. The landlord changed her mind after sending the email to refund the tenants for last month’s rent from December 8, 2021 of \$2,500.00. The landlord was initially “sympathetic” when she thought there was a problem but there was not.

Analysis

Burden of Proof

Both parties, as the applicants, have the burden of proof, on a balance of probabilities, to prove their applications and monetary claims. I informed both parties of the above information during this hearing and they confirmed their understanding of same. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the applicants to provide evidence of their claims, in order to obtain monetary orders.

Both parties received application packages from the RTB, including instructions regarding the hearing process. Both parties received documents entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing their applications. These documents contain the phone number and access code to call into the hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*

- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days from this hearing date, to issue a written decision to both parties.

Both parties received detailed application packages from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the applicants to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the applicants to provide sufficient evidence of their claims, since they chose to file their applications on their own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claims. To prove a loss, the applicants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;

- 2) Proof that the damage or loss occurred due to the actions or neglect of the respondents in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the applicants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

C. COMPENSATION

*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.***

...

D. AMOUNT OF COMPENSATION

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. **A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

I find that both parties did not properly present their applications and evidence, as required by Rule 7.4 of the *RTB Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules*. During this hearing,

both parties failed to properly go through their claims and the documents they submitted in support of their applications.

This hearing lasted 54 minutes, so both parties had ample time to present their applications and respond to the other party's application. I repeatedly asked both parties if they had any other information to add and if they wanted to respond to the other party's submissions. I repeatedly asked both parties about their claims, amounts, and evidence.

On a balance of probabilities and for the reasons stated below, I make the following findings.

Landlord's Application

I award the landlord \$862.62 total for unpaid utilities and Wi-Fi, as the tenants agreed to pay the above amount during this hearing.

I award the landlord \$564.52 of the \$2,500.00 claimed for one month's rent from December 8, 2021 to January 8, 2022. The above amount is prorated rent from December 8 to December 14, 2021 ($\$2,500.00/31$ days in December 2021 x 7 days from December 8 to 14, 2021 inclusive since rent is paid on the 8th day of each month). At this hearing, the tenants agreed that they did not pay rent for December 8, 2021 to the landlord. I find that the landlord is only entitled to unpaid rent for the period while the tenants were actually occupying the rental unit, which both parties agreed was until December 14, 2021.

I dismiss the remaining amount of \$1,935.48 for the landlord's claim for a loss of rent from December 15, 2021 to January 8, 2022, without leave to reapply.

During this hearing, the landlord did not review the terms of the written tenancy agreement that she provided for this hearing, to indicate whether this was a month-to-month or a fixed term tenancy. Upon my review of the tenancy agreement, it indicates that this was a fixed term tenancy of 7 months from September 8, 2021 to April 8, 2021. The fixed term end date of April 8, 2021 predates the tenancy start date of September 8, 2021. The landlord did not clarify or explain the above issue during this hearing.

The landlord claimed that she did not receive one month's notice from the tenants before they vacated the rental unit. The tenant said that one month's notice was not

provided to the landlord because the tenants had to leave urgently, due to the mold problem.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss. I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

I find that the landlord failed to provide sufficient documentary or testimonial evidence including copies of rent advertisements, to show if or when it was advertised for re-rental, the rent amount per month, the term of length of the tenancy, how long the unit was advertised for, what details were given in the advertisement, and other such information. I find that the landlord failed to provide sufficient documentary or testimonial evidence to indicate how many inquiries were made for re-rental, how many showings were done, when any showings were done, how many applications were received, how many applications were accepted or rejected, and other such information. I find that the landlord failed to provide sufficient documentary evidence regarding if or when the rental unit was re-rented to new tenants, the length of tenancy, the rent for the tenancy, whether a new tenancy agreement was signed and a copy of same, or other such information. The landlord agreed at this hearing, that she did not provide the above documentary evidence.

The landlord stated that the rental unit was re-rented to new tenants in "spring." I find that the landlord failed to provide sufficient testimonial evidence regarding the date when the rental unit was re-rented to new tenants, the length of tenancy, the rent for the tenancy, and whether a new tenancy agreement was signed.

I find that the landlord failed to provide sufficient documentary evidence that she was delayed in re-renting the unit to new tenants, because of tradespeople, as she claimed at the hearing. The landlord agreed at this hearing, that she did not provide the above documentary evidence.

The landlord had ample time of over seven months, from filing her application on December 27, 2021, to the hearing date of August 8, 2022, to provide the above evidence but failed to do so.

As the landlord was partially successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,250.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$1,250.00, in partial satisfaction of the monetary award. I issue a monetary order of \$277.14 to the landlord, for the balance owed by the tenants.

Tenants' Application

I dismiss the tenants' application for \$7,526.14, without leave to reapply.

During this hearing, the tenants did not indicate what items they were seeking or the amounts of same. Based on their online RTB dispute application, they indicated they were seeking \$1,250.00 for the return of their security deposit and \$6,276.14 for other losses. Based on their online RTB dispute details, they indicated the following regarding their claim for \$6,276.14:

"Please find a list of the out of pocket monies spent due to having to leave [rental unit address] on Nov 16th due to serious mold contamination from the inspectors report: Rent paid for the month of Nov - \$ 2500.00 less the 2 weeks we stayed - \$ 1250.00 Landlord owes for remainder of Nov - \$ 1250.00 Landlord owes damage deposit - \$ 1250.00 Cost of moving out - \$ 650 Cost of storage until April 2022 @ 120 per month - \$ 480.00 Cost of Hotels for 13 days- \$ 2646.14"

The tenants did not state any of the above information during this hearing. The above information was taken directly from the tenants' online application. The tenants did not go through any amounts or documents during this hearing, regarding moving costs, storage costs, or hotel costs, as noted above.

The tenants failed to provide sufficient testimonial evidence of what losses they suffered, the amounts of such losses, or if, when, where, or how they expended any money for losses. The tenants did not point me to documentary proof that they suffered any losses or paid for them. The tenants did not go through their documents during this

hearing. They did not point me to specific documents, provisions, pages, or other such information, during this hearing. They simply mentioned the existence of providing documents for this hearing but did not go through them in any detail during this hearing. The landlord disputed the tenants' entire application.

I find that the tenants failed to provide sufficient documentary or testimonial evidence that they were forced to move out due to "duress" or that they had a "frustrated tenancy," as they claimed during this hearing. I find that the tenants moved out of the rental unit on their own accord, so they are responsible for their own costs for hotel, moving, and storage. The landlord disputed the tenant's entire application and claimed that her own professional expert did not find evidence of mold or flooding.

As noted above, I ordered the landlord to retain the tenants' entire security deposit of \$1,250.00 in partial satisfaction of the landlord's monetary award. Therefore, I find that the tenants are not entitled to its return, as requested in their application.

I find that the tenants are not entitled to half a month's rent refund for November 2021 of \$1,250.00. I find that the tenants were occupying the rental unit until December 14, 2021, as the tenant agreed with this date during the hearing, stating that the tenants' furniture was still in the rental unit until the above date. Section 26 of the *Act* requires the tenants to pay rent to the landlord as per the tenancy agreement, despite any contraventions of the *Act*, by the landlord. I find that the tenants owed rent to the landlord, payable on the 8th day of each month, as agreed by both parties during this hearing. I find that the tenants did not have any entitlement to deduct or reduce their rent, due to paying for emergency repairs as per the procedure in section 33 of the *Act* or an order from an Arbitrator. The tenants did not claim for or provide sufficient testimonial evidence regarding the above during this hearing.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$1,250.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$277.14 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should

the tenant(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.

The remainder of the landlords' application is dismissed without leave to reapply.

The tenants' entire application is dismissed without leave to reapply.

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: August 08, 2022

Residential Tenancy Branch