



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MN SDS-DR, FFT
Landlords: MN RL-S, MN DL-S, FF L

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a tenancy.

On November 23, 2021 the tenant applied for:

- an order for the landlord to return the security deposit the landlord is retaining without cause; and
- the filing fee.

On December 21, 2021 the landlords applied for:

- a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit;
- an order for the tenant to pay to repair the damage they, their pets, or their guests caused during the tenancy, requesting to retain the security and/or pet damage deposit; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding the service of documents.

Preliminary Matters

Jurisdiction

In the tenant's application, the address for one of the landlords was the same as the dispute address. In the hearing, the parties confirmed this was an error and that the tenant did not share bathroom or kitchen facilities with the owner. Finding the Residential Tenancy Branch had jurisdiction over the matter, I continued with the hearing.

Small Claims

The landlords' evidence included documentation related to a small claims application involving the parties. The parties agreed the case had been dismissed by Small Claims Court as it was not within the Court's jurisdiction.

Issues to be Decided

- 1) Is the tenant entitled to the return of the security deposit?
- 2) Is the tenant entitled to the filing fee?
- 3) Are the landlords entitled to a monetary order for unpaid rent?
- 4) Are the landlords entitled to compensation from the tenant for damages caused during the tenancy?
- 5) Are the landlords entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. The tenancy was for a fixed term, from May 15, 2021 to May 15, 2022; rent was \$7,000.00, due on the first of the month; and the tenant paid a security deposit of \$3,500.00, which the landlords still hold. The tenant vacated on September 30, 2021, 7 months and 15 days before the end of the fixed term.

The tenancy agreement is not completed in full; it does not indicate what is to occur at the end of the fixed term.

The landlords' December 21, 2021 application indicates they are seeking \$14,000.00 for 2 months rent. The Word document submitted as the landlords' Monetary Order Worksheet indicates the landlords are seeking \$52,500.00 in unpaid rent, but provides no breakdown of that amount. In the hearing, the landlords indicated they were seeking \$21,000.00 for 3 months rent: October, November, and December 2021.

The tenant testified they gave notice on August 10, 2021 that they would be vacating the rental by September 30, 2021, due to a job loss resulting in them not being able to afford the rent. A copy of the notice is submitted as evidence. The tenant testified they received a note from the landlord's representative, acknowledging that the tenant would vacate the unit on September 30, 2022.

The landlord submitted that it is a large, unique property and "an above-average rental." The landlord testified that once they received the tenant's notice to end tenancy, they began advertising the property online immediately. The landlord testified they posted the property on craigslist, Facebook Marketplace, and on Kijiji. No documentary evidence was presented in support.

The tenant testified that when they Googled the property, they did not find the ads, but that they might have missed them.

The landlord testified they had some initial response to the ads, three parties visited the property, then there was no response. The landlord testified that one of the parties wanted a 3-year tenancy term, which the landlord did not want to accept. The landlord testified that they kept refreshing the ads, then paused the advertising as one party had said they would love to take the rental, but "there was a certain smell coming in."

The landlord testified that around mid-September they decided to replace the carpets. The landlord testified they continued to post the ad, but received little response.

The landlord testified that they considered other options, and around Christmas decided to move in themselves.

The tenant submits that the landlord did not mitigate their losses because the landlord wanted to rent out the whole property; the tenant submitted the landlord did not seek to rent out separate portions of the property, such as "the studio at the back."

The landlord testified that when they visited the unit on October 2, 2021, after the end of the tenancy, it was very clean, and that they don't dispute that the tenant shampooed the carpets. The landlord testified that when they returned, within 5 days, to show the unit, there was a very bad odour in the unit, to the point where it was "not livable."

The landlord testified that the tenant had had a puppy in the house; the landlord testified they did not know what the source of the odour was, so drained the hot tub, which did not resolve the odour, so they replaced the carpet.

The landlord testified that they changed the carpet to laminate, except for three sets of stairs in the rental, on which they replaced the carpet. The landlord submitted as evidence a receipt for \$3,505.00 for the carpet, materials, and installation, and a receipt for \$7,543.14 for laminate.

The tenant submitted that the landlords have done home improvements on the rental and that the carpet replacement may have been an improvement the landlords wanted.

The landlord testified they communicated with the tenant on October 4, 2021, stating that the tenants had breached their contract, that the tenants lived there for only three and a half months, and that the landlord had been advertising the property, but none of the three showings had resulted in a new tenancy.

The tenant testified they gave the landlord their forwarding address in writing on October 20, 2021. The landlord confirmed receiving the tenant's forwarding address, and testified they retained the security deposit to pay for the repairs to the rental.

The landlords testified that a move-in inspection was completed during the 2nd or 3rd day of the tenancy, but that a move-in inspection report was not completed.

Analysis

The parties agree that they entered into a one-year fixed term tenancy agreement, beginning on May 15, 2021, the rent was \$7,000.00 per month, and that the tenant vacated the unit early, on September 30, 2021. I find that no move-in condition inspection report was completed, and the landlords retained the tenant's \$3,500.00 security deposit to pay for repairs to the rental unit.

Unpaid rent

In this dispute, the landlords variously sought \$14,000.00 for 2 months rent, \$21,000.00 for 3 months rent, and \$52,500.00 in unpaid rent without providing an explanation as to how they arrived at that amount. In the hearing, the landlords indicated they were seeking \$21,000.00 for 3 months rent: October, November, and December 2021. I find that the tenant was aware that the landlord is seeking compensation for loss of rent for the months they were unable to rent the unit, and that tenant was able to prepare a response to the landlord's claim despite the fluctuating values.

As explained in Policy Guideline 3 *Claims for Rent and Damages for Loss of Rent*, a tenant is liable to pay rent until a tenancy agreement ends. Sections 45 and 45.1 of the Act set out how a tenant may unilaterally end a tenancy agreement. Where a tenant vacates the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement. This can include the unpaid rent to the date the tenancy agreement ended, and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

The landlord must do whatever is reasonable to minimize their loss. A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances.

The landlord testified that they immediately listed the property online on multiple sites, and had some initial interest which resulted in three showings. The landlord testified that one party was interested, but wanted a 3-year agreement, which the landlord did not find acceptable. The landlords ultimately moved into the rental unit themselves and stopped advertising.

A rental property requiring \$7,000.00 a month in rent will be out of reach for most renters in BC. While I find it understandable that the landlords would not wish to enter into a three-year agreement with a new and unknown tenant, I find the landlords could have been reasonably expected to do more than advertise on free websites to market this particular property. It also would have been reasonable for the landlords to reduce the monthly rent. As the landlords did not take these actions, the amount of monetary compensation for their loss of rent will be reduced.

I award the landlords \$7,000.00 for unpaid rent in October, \$6,500.00 for unpaid rent in November, and \$6,000.00 for unpaid rent in December for a total award of \$19,500.00.

Security Deposit

The landlords testified they kept the tenant's security deposit of \$3,500.00 to cover their repair costs.

Section 24 of the Act provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I find the landlord did not complete a move-in inspection report in accordance with section 23 of the Act, and consequently have extinguished their right to make a claim against the deposit for damages.

Section 38(1) states:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) states:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlords did not repay or make a claim against the security deposit within 15 days of receiving the tenant's forwarding address in writing, I find the landlords are

required to pay the tenant double the amount of the security deposit, pursuant to section 38(6). The tenant is entitled to a monetary award of \$7,000.00.

Damages

[Policy Guideline 17](#) includes that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the rights to file a claim against the deposit for any monies owing for other than damage to the rental unit; and to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

The landlords testified that the tenants left the unit clean and shampooed the carpets, but when the landlords returned to the unit within 5 days, there was a very bad odour in the unit, to the point where it was “not livable.”

The landlords have not provided evidence demonstrating that the smell stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant, and the landlords did not provide a clear explanation of the carpet replacement costs, including the cost difference between replacing some of the carpet with laminate, and whether the carpet used to replace that on the stairs was similar to the original.

Policy Guideline 16 *Compensation for Damage or Loss* states that 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. The landlords have not provided the information required to allow me to determine whether improvements were made.

I find the evidence presented by the landlords fails to demonstrate that, on a balance of probabilities, the landlords suffered a damage or loss as the result of the tenant’s non-compliance with the Act, regulation, or tenancy agreement, and that the landlords’ expenses were limited to those putting them in the same position as if the damage or loss had not occurred, versus an improvement to the rental unit.

Consequently, I find that the landlords are not entitled to compensation for damages.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As both parties have had some success in this dispute, I decline to award the filing fees.

I find the landlords are entitled to a monetary order as follows:

Landlords' award	\$19,500.00
Tenant's award	- \$7,000.00
Owed to landlord	\$12,500.00

Conclusion

The landlords are granted a monetary order in the amount of \$12,500.00.

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 22, 2022

Residential Tenancy Branch