



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNETC

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for their application from the landlords 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.

Preliminary Issue: Landlords' Monetary Claims

The issues referenced in the tenants' application were discussed with the attending parties. The landlords confirmed that they wanted to claim for monetary compensation that relate to the tenants' overholding of the rental unit, but did not file any applications that have been crossed with the tenants'. The landlords wished to offset their claims against any money owed to the tenants.

Rule 2.11 of the RTB Rules of Procedure states the following about the crossing of applications.

2.11 Filing an Application for Dispute Resolution to counter a claim

To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution. The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [*Documents that must be served with the Notice of Dispute Resolution Proceeding Package*] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [*Respondent's evidence provided in single package*] can be met.

In this case, although the landlords did have the option to file a counter claim, the landlords did not file their own application to be crossed with the tenants'.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. To proceed with any additional claims that were not properly the Arbitrator at the time of the scheduled hearing would be a breach of the principles of natural justice and procedural fairness. For this reason, the hearing proceeded to deal with the tenants' monetary claims only. The landlords are at liberty to file their own application. Liberty to apply is not an extension of any applicable timelines.

Preliminary Issue: Landlords' Evidence

In review of the evidentiary materials submitted by the landlord, a significant of the written material is not legible.

RTB Rules of Procedure 3.7 states the following about evidence:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

As a large portion of the landlords' evidence is not legible, the evidence will be excluded the purposes of this hearing. The landlords confirmed that their written evidence is not material to these proceedings, and consented to proceeding with the scheduled hearing.

As the landlords confirmed receipt of the tenants' application and evidentiary materials, I find the landlords duly served with these documents in accordance sections 88 and 89 of the *Act*, and the hearing proceeded as scheduled to deal with the tenants' claims.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, 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 fixed-term tenancy began on March 1, 2020, and was to end on March 1, 2022. On November 29, 2021 the tenants were served with a 2 Month Notice for Landlord's Use as the home was sold. The effective date of the 2 Month Notice was January 31, 2022. The tenants exercised their option to move out early with 10 Day's Notice, and gave notice on December 21, 2021 that they would be moving out on December 31, 2021. Both parties confirmed that the tenants paid the rent for the month of December 2021 in the amount of \$2,400.00, and the tenants' security and pet damage deposits of \$1,200.00 and \$400.00 were returned to them.

The tenants filed this application as they never received compensation equivalent to one month's rent from the landlords after being served with the 2 Month Notice. The landlords do not dispute that they had withheld the \$2,400.00 as the tenants did not vacate the rental unit by the effective date of their notice. The landlords testified that the

tenants were not prepared on December 31, 2021, and did not remove all of their belongings and return the keys until on or about January 13 or 14, 2022. The landlords testified that no rent was paid for this period for overholding.

Analysis

Section 51 of the *Act* reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord "the proportion of the rent due to the effective date of the tenant's notice" as per section 50(1)(b) of the *Act*.

Section 51(1.2) of the *Act* states the following: If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In consideration of the evidence before me, I find it undisputed that the tenants paid rent for the entire month of December 2021, and the landlords did not provide the tenants with the 1 month's compensation as required by section 51(1) of the *Act*. Although the landlords felt that they had the right to withhold the compensation for overholding, I note that the landlords did not have the tenants' authorization to withhold this compensation, nor did the landlords have authority to automatically deduct or withhold compensation for this reason under section 51(1) of the *Act*.

As noted above, the tenants are only responsible for paying the proportion of rent due to the effective date of the tenants' notice, which was December 31, 2021. Exercising the option to end the tenancy early under section 50(1) of the *Act* does not exempt the landlords from their obligation to compensate the tenants the equivalent of one month's rent, nor does it exempt the landlords from their obligation to file their own application for dispute resolution to recover any money owed rather than automatically withholding

compensation owed. I am not satisfied that the landlords are currently in possession of an Order from an Arbitrator allowing them to withhold this amount. Furthermore, although the landlords claimed that they had withheld the compensation for overholding by the tenants, the pro-rated amount of rent that would have been owed for this period of approximately two weeks would not be equivalent to the one month's rent withheld.

I note that this tenancy was a fixed term tenancy that was to end on March 1, 2022, and the effective date of the 2 Month Notice was January 31, 2022. The tenants did not dispute this 2 Month Notice, but rather decided to exercise the option to accept the 2 Month Notice as valid, and move out before the end of the fixed term. By doing so, I find that the tenants accepted the 2 Month Notice, and both parties had implied their consent to end the fixed term tenancy earlier than March 1, 2022.

I find that the landlords failed to provide the tenants with the required compensation under section 51(1) of the *Act*, and did not have the authority to do so. Accordingly, I allow the tenants' application for compensation in the amount of \$2,400.00.

As the tenants were successful with their claim, I allow the tenants to recover the \$100.00 filing fee.

Conclusion

I issue a **\$2,500.00** Monetary Order in the tenants' favour, which includes the tenants' entitlement to compensation under section 51(1) of the *Act*, plus the \$100.00 filing fee for this application.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(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: September 20, 2022