Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, MNETC, FFT

Introduction

This hearing dealt with the tenants' application, filed on March 27, 2022, pursuant to the *Residential Tenancy Act ("Act")* for:

- a monetary order of $483.95 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation"*) or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit of $550.00, totalling $1,100.00, pursuant to section 38;
- a monetary order of $13,200.00 for compensation because the landlords ended the tenancy and have not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The two landlords, landlord JC ("landlord") and "landlord VF," and the two tenants, tenant LL ("tenant") and "tenant MC" 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 69 minutes from 1:30 p.m. to 2:39 p.m.

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

Both landlords confirmed that they co-own the rental unit. The landlord provided the rental unit address. The landlord identified himself as the primary speaker for both landlords at this hearing and landlord VF agreed to same.

The tenant identified herself as the primary speaker for both tenants at this hearing and tenant MC agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given an opportunity to settle and declined to do so.

I repeatedly cautioned the two tenants that if I dismissed their application without leave to reapply, they would receive $0. Both tenants repeatedly affirmed that they were prepared for the above consequence if that was my decision.

I cautioned the two landlords that if I granted the tenants' application, the landlords would be required to pay the tenants $14,883.95 total for their entire monetary claim. The landlord affirmed that both landlords were prepared for the above consequence if that was my decision.

Preliminary Issue – Service of Documents

The tenant stated that she served two copies of the tenants' application for dispute resolution hearing package to the two landlords on April 1, 2022, both by way of registered mail to the service address provided by the landlords, which is the rental unit. The tenant provided two Canada Post tracking numbers verbally during this hearing. She said that both mail packages were returned to sender. She claimed that she did not ask for a signature option for the mail. She explained that she did not know that the postal code for the rental unit was changed by Canada Post.

The landlord said that the landlords did not receive the tenants' application or evidence. He stated that the landlords got a courtesy email from the RTB notifying them about this hearing and they asked for and received a copy of the notice of hearing from the RTB.

He claimed that the postal code for the rental unit was changed by Canada Post approximately one year prior and the landlords received notice of same. He explained that the tenants used the wrong postal code, as per their application. He maintained that the landlords did not receive the tenants' evidence including hydro bills, monetary order worksheet, or photograph of an envelope. He said that the landlords already had the tenancy agreement and Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 6, 2021 ("2 Month Notice"), provided by the tenants as evidence. He stated that the landlords wanted to proceed with this hearing, even if I considered the tenants' application and evidence, that was not received by the landlords.

In accordance with sections 89 and 90 of the *Act*, I find that both landlords were deemed served with the tenants' application on April 6, 2022, five days after their registered mailings. The tenants provided two valid Canada Post tracking numbers verbally during this hearing. I find that the landlords were served at the rental unit, which is an address that they provided for service on page 1 of the tenancy agreement, which was provided by the tenants as evidence. I find that the tenants were not notified of the change in postal code by Canada Post, as they had already vacated the rental unit, and the landlords did not provide documentary proof of same. Unclaimed or refused mail does not avoid the deeming provisions of section 90 of the *Act*. I find that the landlords received the tenants' application from the RTB and were already in possession of the tenancy agreement and 2 Month Notice. I also note that the landlords affirmed that they wanted to proceed with this hearing, even if I considered the tenants' application and evidence that they did not receive. I find that the landlords did not object to the tenants' application and evidence being considered in my decision and failed to show prejudice to the landlords, if I considered it. Accordingly, I considered the tenants' entire application and evidence in this decision.

The landlord testified that the tenants were served with one copy of the landlords' evidence package on November 18, 2022, to the tenants' address provided on the notice of hearing. He said that he only received the tenants' notice of hearing from the RTB on November 15, 2022, so that is why the landlords' evidence was served on November 18, 2022. He provided a Canada Post tracking number verbally during this hearing. He stated that he sent a text message to the tenant, asking for her email address, so he could email her a copy as well, but the tenant did not respond.

The tenant said that the tenants did not receive the landlords' evidence. She stated that she did not know that the postal code for the rental unit changed. She agreed that she received a text message from the landlord on November 17, 2022, but she called the RTB and they did not call her back, so she did not respond to the landlord. She

explained that the landlords' evidence was late because November 17, 2022 was less than 14 days prior to this hearing. Both tenants affirmed that they wanted to proceed with this hearing, even if I considered the landlords' evidence that they did not receive.

I find that both tenants were not properly served with the landlords' evidence, in accordance with sections 88 and 90 of the *Act*. The tenants affirmed that they did not receive the landlords' evidence. I find that the landlords only sent one copy, not two copies, one for each tenant. I find that the landlords' evidence would have been deemed received late by the tenants, less than 7 days prior to this hearing on November 28, 2022, since it was mailed out November 18, 2022, and deemed received 5 days later by registered mail on November 23, 2022, as per section 90 of the *Act*. I find that the tenants would be prejudiced since they did not have enough notice or time to respond to the landlords' evidence. Accordingly, I did not consider the landlord's evidence in this decision.

The tenant confirmed receipt of the landlords' 2 Month Notice. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover double the amount of their security deposit?

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

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

Background and Evidence

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

The landlord and the tenant agreed to the following facts. This tenancy began on July 1, 2020. Monthly rent of $1,100.00 was payable on the first day of each month. A security deposit of $550.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. No move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was completed but the tenants did not sign it. The landlords did not have written permission to keep any part of the tenants' security deposit. The landlords did not file an application to keep any amount from the tenants' security deposit.

The tenant stated the following facts. The tenants provided a written forwarding address to the landlords on March 30, 2022, by way of registered mail. The tenant provided a Canada post tracking number verbally during this hearing. The tenants seek double the amount of their security deposit of $550.00, totalling $1,100.00. The tenants seek money for hydro because the landlords used power from the rental unit for their garden and barn. The tenants did not have a choice, the landlords dug the trench and had to go to the basement. The landlords agreed to pay 1/3 of the hydro bill to the tenants. There were no payments for the share of the landlords' bill. The landlords did not pay for March, May, or June hydro costs to the tenants.

The landlord stated the following facts. The landlords did not receive the tenants' written forwarding address. The landlords served their evidence to the tenants to the address provided in the notice of hearing, not from receiving a written forwarding address from the tenants. Payments for hydro were made in cash to the tenants but no receipts were provided. The landlords made several e-transfers and the last one was on May 4, 2021, in the amount of $150.00. There was a verbal agreement for the landlords to pay 1/3 of the hydro bills to the tenants. The landlords dispute the tenants' claims for hydro. The landlords asked the tenants for permission to use the hydro, but it was not in writing.

The tenant stated the following facts in response. The landlords made "maybe one cash payment" to the tenants for hydro costs. The landlords made hydro payments to the tenants by e-transfer, but they were two to three months behind, which is why the landlords owe outstanding money to the tenants.

The tenant testified regarding the following facts. The tenants were evicted under false pretenses according to the 2 Month Notice. They were given four months' notice to move out, including two months as a "grace" period. Landlord VF said that her father was moving from Quebec, into the rental unit. After the tenants moved out, they checked the general mail delivery PO Box on August 4, 2021, and saw a hydro bill

envelope in the name of the new tenant residing at the rental unit. The hydro bill had the name of landlord VF's boyfriend's mother or stepmother. The tenants were introduced to landlord VF's boyfriend and father, so they know their surname. The tenants took a photograph of the outside of the hydro bill envelope with the addressee's name visible. Landlord VF had a boyfriend, while she was separated from the landlord. The tenants seek 12 months rent compensation because the landlord did not use the rental unit for the purpose on the 2 Month Notice, as landlord VF's boyfriend's parents are not related to landlord VF. Only landlord VF's parents would qualify as close family members.

Tenant MC testified regarding the following facts. There were four people living at the rental unit after the tenants moved out: landlord VF, her boyfriend, and his parents. Landlord VF told the tenants that she had health issues, and she needed her dad to move in. Tenant MC saw them move things into the rental unit and they had a trailer sitting there for a couple of months. Tenant MC drove by the rental unit everyday for about three weeks after moving out, and about once a week for three months from July to October. He saw vehicles at the rental unit, and he knows they were living there.

The landlord testified regarding the following facts. He was amicably separated from landlord VF. In October 2020, landlord VF became ill. The covid-19 pandemic started at the end of February 2020. A list of the hospital visits for landlord VF is attached in the landlords' evidence. On March 6, 2021, the landlords issued the 2 Month Notice to the tenants and provided them with four months notice to move out, prior to the end of their lease. The plan was for landlord VF to move into the rental unit with her parents, but her parents became ill and could not make the journey from Quebec. The landlord is a critical care nurse, working during the covid-19 pandemic. The living situation changed. Landlord VF moved into the rental unit with her boyfriend and his parents. The landlords provided a letter from landlord VF's parents and her boyfriend's parents. The hydro bill referenced by the tenants was in the name of landlord VF's boyfriend's mother because she was residing at the rental unit. The landlords dispute the tenants' 12 month rent compensation claim because there are extenuating circumstances.

Analysis

Credibility

I found the landlord to be a more credible witness, as compared to the two tenants. The landlord provided his testimony in a calm, candid, straightforward, and consistent manner. He did not change his testimony, when asked questions by the tenants or me.

The landlord admitted when facts were unfavourable to the landlords. He agreed that the landlords already had the tenancy agreement and 2 Month Notice, prior to the tenants filing their application, even though they did not receive those documents as part of the tenants' application package. He agreed that the landlords did not use the rental unit for the purpose on the 2 Month Notice, after the tenants vacated.

Conversely, I found the two tenants to be less credible witnesses, as compared to the landlord. The tenants provided their testimony in an upset, agitated, and inconsistent manner. Their testimony changed frequently throughout this hearing. They talked at the same time as each other and interrupted the landlord and I, while we were speaking. They argued with the landlord, after asking questions to him, when they did not agree with his answers. During this hearing, I informed them that I found their testimony to be confusing and contradictory, and repeatedly warned them to stop interrupting each other, the landlord, and me.

Rules and Burden of Proof

At the outset of this hearing, I repeatedly informed both tenants that, as the applicants, they had the burden of proof, on a balance of probabilities, to present their submissions and evidence, and to prove their monetary claims, in order for me to make a decision regarding their application. The tenants affirmed their understanding of same.

The tenants were provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which they were required to serve to the landlords. The tenant testified that these documents were served to the landlords.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (my emphasis added):

> *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 following RTB *Rules of Procedure* state, 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…*

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

During this hearing, the tenants failed to properly go through their claims, amounts, and evidence submitted in support of their application. The tenant mentioned submitting documents but did not review them in specific detail during this hearing. The tenants did not point me to specific documents, page numbers, provisions, or other such information. The tenants did not indicate what provisions of the *Act* they were applying under or how they arrived at the amounts that they claimed in this application.

This hearing lasted 69 minutes, so the tenants had ample opportunity to present their application and respond to the landlord's testimony. I repeatedly asked the tenants if they had any other information or evidence to present, during this hearing. I provided the tenants with ample and additional time to look up information and search through their documents, as they asked for this extra time, repeatedly throughout this hearing.

Findings

Hydro Costs of $483.95

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 the claim. To prove a loss, the tenants 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 landlords 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 tenants 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.*

In their online RTB application details, the tenants stated the following regarding their monetary claim for $483.95 entitled "I want compensation for my monetary loss or other money owed:"

> *"4 months of unpaid Hydro from Valerie's barn/home/garden."*

I find that the tenants failed the above four-part test, pursuant to section 67 of the *Act* and Residential Tenancy Policy Guideline 16, because they did not provide details about the following:

- *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 tenants did not sufficiently explain their hydro costs claim of $483.95 during this hearing. They did not provide the above amount for this claim, during this hearing. The above amount and information were taken from the online RTB dispute access site details, which were completed by the tenants when they filed this application.

The tenants did not provide a written agreement regarding the hydro costs that the landlords agreed to pay, they did not provide a ledger or accounting of which costs were paid and unpaid by the landlords, and they did not provide any specific monetary amounts per billing period.

The tenant testified that the landlords did not pay for three months of hydro for March, May and June. She did not indicate any specific dates or the year for the above months. The tenants' above online RTB dispute access site description indicates that there were four months outstanding for hydro, but no other details regarding same. The tenants did not review the hydro bills, that they submitted as evidence, in any specific

detail during this hearing. They simply referenced having provided the hydro bills as evidence. They did not review the dates for the billing periods, the amounts billed by the hydro company per time period, the hydro usage per billing period, the amount owing by the landlords for each billing period, any amounts paid by the landlords for each billing period, or other such information.

The tenant testified that the landlords paid "maybe 1 cash payment" for the hydro bills and they were "two to three months behind." The landlord testified that the landlords made cash payments to the tenants, no receipts were given by the tenants for cash payments, and other payments were made by e-transfer, including one for $150.00 on May 4, 2021. The tenants did not dispute the above information from the landlord, during this hearing, despite being given an opportunity for same. The tenants claimed that the landlords did not pay hydro costs for May, but the landlords claimed that they paid $150.00 as noted above, and the tenants did not dispute same.

On a balance of probabilities and for the reasons stated above, the tenants' application for $483.95 for hydro costs is dismissed without leave to reapply.

Double Security Deposit of $1,100.00

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the testimony of both parties at this hearing.

The following facts are undisputed. This tenancy ended on July 1, 2021. The landlords did not have the tenants' written permission to keep any amount from the deposit. The landlords did not file an application at the RTB to keep any amount from the deposit.

I find that the tenants provided a written forwarding address to the landlords on March 30, 2022, by way of registered mail. I find that the landlords were deemed to have received it on April 4, 2022, five days after it registered mailing as per section 88 of the *Act*. Section 88 of the *Act* permits the tenants to serve a written forwarding address to the landlords by regular or registered mail. Although the landlords claimed that they did not receive it, the tenants provided a valid Canada Post tracking number during this hearing. The Canada Post website for the tracking number provided, indicates that the mail package was delivered on April 6, 2022. I also find that the tenants were not aware of the change in postal code for the rental unit, after they vacated, since only the landlords received notice of same, not the tenants, and the landlords failed to provide documentary proof of same.

The landlords did not return the tenants' deposit at all, within 15 days of the end of the tenancy on July 1, 2021, or the written forwarding address deemed receipt date of April 4, 2022.

I find that the landlords' right to claim against the deposit for damages was extinguished for failure to complete a move-in condition inspection report, contrary to section 24 of the *Act*.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the amount of their security deposit of $550.00, totalling $1,100.00, from the landlords. There is no interest payable on the deposit during the period of this tenancy. The tenants are provided with a monetary order for same, against the landlords.

12 Months' Rent Compensation of $13,200.00

A copy of the landlords' 2 Month Notice was provided for this hearing. The effective move-out date on the notice is July 1, 2021. The reason indicated on the 2 Month Notice was:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
- *Please indicate which family member will occupy the unit.*
    - *The father or mother of the landlord or landlord's spouse.*

The tenant confirmed that the tenants seek 12 months' rent compensation because the landlords did not use the rental unit for the purpose stated on the 2 Month Notice.

The tenants did not indicate the amount of $13,200.00, for this specific claim during this hearing. This amount was taken from the online RTB dispute access site details provided by the tenants when they filed this application.

Section 49(3) of the *Act* states the following:

> *(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

> *51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*
>
> *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
>
> *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

It is undisputed that the tenants vacated the rental unit on July 1, 2021, pursuant to the 2 Month Notice. It is undisputed that the landlords issued the 2 Month Notice to the tenants for landlord VF's parents to occupy the rental unit after the tenants moved out. It is undisputed that the landlord VF's parents qualify as close family members (landlord's parents), who are entitled to occupy the rental unit, pursuant to the 2 Month Notice.

Section 51(3) of the *Act* states the following:

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

Residential Tenancy Act

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- *accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,*
- *or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

I am required to consider the above section 51(3) of the *Act*, regardless of whether it is raised by any party during this hearing. I informed the tenants of same during this hearing and they confirmed their understanding of same.

On a balance of probabilities and for the reasons stated below, I find that the landlords met their onus of proof and provided sufficient evidence that extenuating circumstances prevented them from accomplishing the stated purpose for ending the tenancy, as indicated on the 2 Month Notice.

I accept the affirmed testimony of the landlord during this hearing. The tenants did not dispute same during this hearing. I find that the circumstances surrounding the covid-19 pandemic, the landlord's job as a critical care nurse during covid-19, and the illnesses of landlord VF and her parents, were unforeseen events that could not have been predicted or controlled by anyone, including the landlords.

I find that landlord VF's parents intended to occupy the rental unit, to care for landlord VF, but they were medically unwell and could not leave Quebec to move to the rental unit in British Columbia. I find that landlord VF's parents did not occupy the rental unit, due to circumstances beyond the control of the landlords. I accept the affirmed testimony of the landlord, that landlord VF's parents were ill and could not leave Quebec to move into the rental unit with landlord VF. The tenants did not dispute same during this hearing.

I find that the landlords could not have known at the time that they issued the 2 Month Notice to the tenants in July 2021, that unforeseen events would occur, including an ongoing worldwide covid-19 pandemic that is unpredictable and constantly changing. The covid-19 pandemic cannot be controlled by anyone and has had several resurgent "waves" and changing restrictions and requirements imposed by the provincial government on local residents and businesses at different times since March 2020.

I find that the landlords' actions of using the rental unit for landlord VF to reside with her boyfriend and his parents caring for her while she was ill, were reasonable, given the extenuating circumstances, after the tenants moved out. The landlords did not re-rent or sell the unit, or attempt to obtain a financial profit, showing their good faith intention.

I note that the landlords provided almost four months notice for the tenants to vacate, as the 2 Month Notice was dated for March 6, 2021, and effective on July 1, 2021. The tenant testified that the tenants were provided with four months' notice to move out, including an additional two month "grace" period on top of the two months required in the 2 Month Notice. I find that this shows the landlords' good faith intention to provide as much notice as possible to the tenants, to vacate the rental unit.

I find that the tenants provided insufficient testimonial and documentary evidence that the landlords could have predicted any of the above events, including the constantly changing covid-19 pandemic, the landlord's job as a critical care nurse during covid-19, and the illnesses of landlord VF and her parents.

On a balance of probabilities and for the reasons stated above, I find that the tenants are not entitled to twelve times the monthly rent of $1,100.00, totalling $13,200.00, from the landlords. Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

Filing Fee of $100.00

The tenants applied for the $100.00 filing fee twice in their application. They included it in addition to their hydro claim of $483.95 and separately as a filing fee claim. During this hearing, the tenant affirmed that the tenants were seeking a total monetary claim of $14,883.95, including $483.95 for hydro costs and $100.00 for the filing fee.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee. This claim is also dismissed without leave to reapply.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $1,100.00 against the landlord(s). The landlord(s) must be served with 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.

The remainder of the tenants' 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: November 30, 2022

Residential Tenancy Branch