Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL
Tenants: MNDCT, MNSD, FFT

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of $5,250.00 for unpaid rent pursuant to sections 26 and 67;
- a Monetary Order of $1,184.08 for damage that the Tenants, their pets or their guests caused during the tenancy pursuant to sections 32 and 67;
- a Monetary Order of $7,220.70 for the Landlord's monetary loss or other money owed by the Tenants pursuant to section 67;
- an order to keep the Tenants' security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for the Landlord's application from the Tenants pursuant to section 72.

This hearing also dealt with the Tenants' application under the Act for:

- a Monetary Order of $18,729.47 for the Tenants' monetary loss or other money owed by the Landlord pursuant to section 67;
- recovery of the Tenants' security deposit and/or pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for the Tenants' application from the Landlord pursuant to section 72.

The Landlord and the Tenants' agent GH attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Amendment of Landlord's Application

The Landlord's application initially listed a third tenant, EAF. EAF is the Tenants' daughter. The Tenants submitted a statement from EAF which indicates that EAF did not sign the tenancy agreement and should not be a part of these proceedings. I have reviewed a copy of the tenancy agreement and find that EAF did not sign the agreement. According to Policy Guideline 13. Rights and Responsibilities of Co-tenants, a "tenant" is "a person who has entered a tenancy agreement to rent a rental unit or manufactured home site". In contrast, a person who is permitted by a tenant to move into the rental unit may be an "occupant" who has "no rights or obligations under the tenancy agreement". In this case, I find EAF did not sign the tenancy agreement and therefore should not be named as a tenant in these proceedings. Pursuant to section 64(3)(c) of the Act, I have amended the Landlord's application to remove EAF as a party.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents. GH confirmed the Tenants received the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "Landlord's NDRP Package"). The Landlord acknowledged receipt of the Tenants' notice of dispute resolution proceeding package and documentary evidence (collectively, the "Tenants' NDRP Package"). Pursuant to section 71(2)(c) of the Act, I find the Tenants to have been sufficiently served with the Landlord's NDRP Package and the Landlord to have been sufficiently served with the Tenants' NDRP Package.

Preliminary Matter – Tenants' Application Brought Forward

The Tenants' application was not crossed with the Landlord's application and was originally scheduled to be heard on July 24, 2023. By consent of the parties, I have brought forward the Tenants' application to be heard together with the Landlord's application.

Preliminary Matter – Clarification of the Landlord's Claims

As part of the Landlord's evidence, the Landlord submitted a monetary order worksheet dated June 30, 2022 with the following amounts:

Item	**Amount**
Handyman Invoice	$100.00
Curtain Invoice	$481.58
Blind Cleaning Invoice	$370.44
Registered Mail Fee	$38.15
Early Termination Penalty	$5,240.00
Tenant Placement Fee	$2,625.00
Travel Ticket Cancellation	$7,924.92
Vacancy in March, April, and May 2022	$15,720.00
Registered Mail Fee	$47.22
Filing Fee	$100.00
Printing and Copying Fee	$40.00
Total	**$32,687.29**

However, I find the Landlord's claims on his application only include several of the items listed above. In particular, I find the Landlord's application does not include claims for loss of rental income in April and May 2022, the early termination penalty, or the tenant placement fee.

Rule 2.2 of the Rules of Procedure states:

> **2.2 Identifying issues on the Application for Dispute Resolution**
> The claim is limited to what is stated in the application.

I find the Landlord did not submit and serve an Amendment to an Application for Dispute Resolution form to add new claims or increase the amounts claimed, as is required under Rule 4.1 of the Rules of Procedure.

Therefore, I will only consider the Landlord's claims as stated in the Landlord's application, including a claim for loss of rental income in March 2022. I note the Landlord had applied for "unpaid rent" for the month of March 2022, however I find it is

clear from the parties' testimonies that the Landlord intended to seek loss of rental income for March 2022.

I further note that fees for registered mail, printing, and copying are generally not recoverable under the Act since it is not a breach of the Act or regulations for a party to file for dispute resolution.

Issues to be Decided

1. Is the Landlord entitled to compensation of:
    a. $5,250.00 for loss of rental income in March 2022?
    b. $1,184.08 for damage that the Tenants, their pets or their guests caused during the tenancy?
    c. $7,220.70 for monetary loss or other money owed?
2. Are the Tenants entitled to compensation of $18,729.47 for monetary loss or other money owed?
3. Are the parties entitled to recover the filing fee for their respective applications?
4. Who is entitled to keep the security and/or pet damage deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

The rental unit is one of two suites in a house. This tenancy commenced on September 30, 2021 for a fixed term ending on September 30, 2022, and was to continue thereafter on a month-to-month basis. Rent was $5,240.00 due on the last day of each month. The Tenants paid a security deposit of $2,620.00, a pet damage deposit of $2,620.00, and a fob deposit of $200.00, which are held by the Landlord.

The parties attended a move-in inspection on September 30, 2021. The Landlord submitted a copy of the signed condition inspection report into evidence.

The Landlord testified that when he visited the rental unit in January 2022, he was told by one of the Tenants, TMF, about possibly being laid off and the Tenants moving back to their home country. The Landlord stated he told TMF that generally speaking winter

was not a good time to re-rent a 5-bedroom family home, and the Tenants would be responsible for paying the rent until the Landlord finds another tenant.

The Landlord testified that on February 14, 2022, he received a letter from lawyers acting for the Tenants at the time. This letter states that the Tenants will be vacating the premises on February 27, 2022 and will return the keys on that day upon the return of their deposits in full. It also states that the Tenants will be notifying BC Hydro and FortisBC that they will be vacating the premises no later than February 28, 2022. The letter argued that the Tenants “have the right to vacate the premises at any time”, because there is a municipal bylaw which prohibits more than two households from occupying the rental property unless one of the units is occupied by the owner, and the Landlord does not live at the rental property.

The Landlord testified he confirmed with the Residential Tenancy Branch, then spoke with the Tenants on February 21, 2022 to explain that the reason they gave for moving out of the rental unit is not valid.

The Landlord testified the Tenants moved out by the end of February 2022 and did not attend the move-out inspection. The Landlord submitted a screenshot of a text message that he sent to TMF at 12:37 pm on February 27, 2022, which suggests the Landlord had been waiting for the Tenants to do the inspection since 10:00 am.

The Landlord testified he determined the Tenants had moved from the rental unit to an address abroad by contacting the Tenants’ moving company, since the Tenants had redacted the destination address on the moving invoice they submitted into evidence. The Landlord stated that TMF was originally working in the dispute city, and if the Tenants were unhappy with the Landlord, they could have moved to another address in the dispute city, rather than abroad.

The Landlord referred to a screenshot of TMF’s public LinkedIn profile submitted into evidence, which shows that TMF started a new job in his home country. The Landlord testified that the new job location is within an hour’s commute from the Tenants’ new address. The Landlord argued that this confirms the parties’ conversation from January 2022 about TMF losing his job and the Tenants moving back to their country.

The Landlord testified that the Tenants moved out due to TMF’s job situation rather than any problems with the Landlord or the rental unit itself. The Landlord testified that the Tenants submitted false complaint emails and letters in their evidence, which are dated

October 10, 2021, December 4, 2021, December 13, 2021, January 5, 2022, and January 28, 2022 (collectively, the "Disputed Correspondence"). The Landlord emphasized that these letters are "completely fake", a scam, and fraudulent to make it appear as if there were problems between the Landlord and the Tenants. The Landlord denied that the Tenants had sent these emails and letters to him. The Landlord testified that the emails were "forged" by copying and pasting the Landlord's address from legitimate emails between the parties.

The Landlord testified that he received another letter from the Tenants' then lawyers on April 13, 2022. This letter confirms receipt of the Landlord's notice of dispute resolution proceeding and refers to the previous February 14, 2022 letter. It included an offer for the Landlord to retain all deposits held plus an additional $1,184.08 to be paid by the Tenants "in full and final settlement of all and any claims" between the parties. The Landlord pointed out that none of complaints in the Disputed Correspondence or the amounts currently being sought by the Tenants in their application were mentioned in this letter. Copies of the April 13, 2022 letter have been submitted into evidence by both parties.

The Landlord denied the allegations in the Disputed Correspondence. The Landlord denied having let out the Tenants' cat and causing the Tenants to incur emergency vet bills. The Landlord argued that the bills show the charges relate to dental issues.

The Landlord testified that a pipe burst in the rental unit on January 1, 2022, and stated that he attended the same day. The Landlord explained that no plumbers were working, so the Landlord was placed on a waitlist. The Landlord stated that a plumber attended the rental unit on January 3, 2022 and fixed the pipes. The Landlord denied that the Tenants lacked heating during this time. The Landlord testified that there are two gas fireplaces in the rental unit, so the house was still warm.

The Landlord testified that the rental unit was vacant from March 2022 until new tenants signed a contract starting on May 31, 2022. The Landlord stated that the new tenants currently pay $5,250.00 per month in rent. The Landlord testified he started advertising the rental unit on February 22, 2022 on over 33 websites. The Landlord stated that he eventually hired an agent on March 25, 2022, who helped him to find the new tenants.

The Landlord testified the Tenants had moved three heavy closets from one room to another inside the rental unit without the Landlord's permission. The Landlord stated he has a medical condition so he had to hire a handyman to move the closets back. The

Landlord testified the rental unit was missing curtains. The Landlord testified the Tenants also had agreed to pay for carpet and curtain cleaning at the end of the tenancy as per the parties' tenancy agreement. The Landlord submitted handyman, replacement curtains, and blind cleaning invoices into evidence.

The Landlord testified that his family of three had flight tickets to travel abroad on February 18, 2022. The Landlord explained that when he received the Tenants' lawyer's letter on February 14, 2022, he was unable to travel as he needed to re-rent the rental unit. The Landlord stated that the flight charges of $7,924.92 were non-refundable. The Landlord testified that none of his family members travelled. The Landlord stated that "everything happened very quickly" and that he had no time. The Landlord testified that the flights could not be refunded, changed, or used at a later date.

In response, GH testified that the Disputed Correspondence was sent to the Landlord via email and at different mailing addresses. GH stated that the Landlord did not provide an address for service so it was hard for the Tenants to confirm which address to use.

GH stated there were communications between the parties shortly after the Tenants moved in. The first issue was misrepresentation of landscaping fees. GH testified that the Tenants had concerns of being overcharged and taken advantage of as foreigners. GH stated the Tenants asked to do the landscaping themselves.

GH explained that there were other problems, including smoking and marijuana usage by the downstairs tenant, which disturbed and violated the Tenants' right of quiet enjoyment.

GH described an incident in October 2021 during which the Landlord entered the rental unit and let out the Tenants' cat. GH stated that the Tenants' cat sustained a mouth injury and needed emergency medical treatment and follow-up. GH referred to vet bills submitted into evidence by the Tenants.

GH stated in November 2021, the Tenants had emailed the Landlord about a problem with the garage heater. GH explained that the Tenants had removed and secured curtains in the rental unit to avoid damage by their pets. In an email to the Landlord dated November 3, 2021, TMF stated that the rental unit had shelves which were "severely warped, not secured to brackets, or anchored to the wall", and that the Tenants now have "freestanding industrial-level shelves".

GH stated there were further problems between the parties, and referred to correspondence dated December 4, 2021 which alleges the Landlord was peering into windows and harassing the Tenants.

GH testified that on December 13, 2021, the Tenants sent a letter to the Landlord providing their "first notice of intent to vacate" the rental unit due to material breach of terms and inability to use the premises. This letter gave the Landlord a deadline of December 27, 2021 for the Landlord to reimburse the Tenants for (a) landscaping fees, (b) additional utility fees not properly distributed between the Tenants and the downstairs tenants, and (c) emergency vet fees for letting out the Tenants' cat on October 31, 2021, and requested the Landlord to dissuade the use of "tobacco or marijuana products" on the rental property. Otherwise, the Tenants would end the tenancy and vacate "immediately, but no later than 28 February 2022".

GH confirmed that a waterline burst on January 1, 2022, flooding the rental unit. GH referred to a letter sent to the Landlord on January 5, 2022, which suggests that this had been an issue in the past. GH stated that the rental unit had inadequate winterization and the Tenants were left without water for four days. GH stated the Tenants learned that the Landlord attempted to hire a plumber but cancelled due to the holiday fee charged.

GH referred to an email exchange on January 25, 2022 between the parties about a request for painting the rental unit, and that the Landlord refused the Tenants' request to reschedule to the weekend. GH argued that there was a pattern of behaviour for lack of accommodations.

GH referred to a letter from the Tenants to the Landlord dated January 28, 2022. This letter states as follows (portion redacted for privacy):

> *Following up on your visit today to repair the drywall damage from the water burst, and not having received acknowledgement of my question to you today about either listing the property for rent, or occupying the property yourself … knowing that we're vacating the property NLT 28 February, having a responsibility to negate any costs, can you forward or see any listing you have relating to the rental of [dispute address] being available on 1 March? Or do you intend to occupy the property yourself?*

We want to reinforce that while you're not acknowledging our verbal or written correspondence towards our frustrations with the material terms, even in-person today, at the residence, we are ending the tenancy on 28 February 2022. Also, we do not appreciate lectures on the reasons and/or threats towards maintaining the Lease through the end of September 2022.

Again, we will be retaining Legal Counsel in the matter as well as seeking Alternative Dispute Resolution prior to surgery in March.

GH explained that the Tenants requested the Landlord for listings because of the Landlord's refusal to make fixes and adjustments. GH stated the Tenants tried to give as much notice as they can and wanted to confirm that things are dealt with and mitigated. GH stated the Tenants moved out at the end of February 2022 as they had been saying for two months that they would.

GH confirmed the Tenants retained legal counsel in February 2022, who discovered that the parties' underlying contract was "illegal" due to misuse of the property.

GH argued that the Landlord failed to mitigate damages since the Landlord took nearly two months to attempt to re-rent the rental unit in February 2022. GH stated that the rental unit was listed for an inflated price of $5,990.00 per month and referred to online screenshots submitted by the Tenants. GH stated that the Landlord also tried to list the property for sale but was unsuccessful. The Tenants submitted a price history from Zillow which shows that the rent was reduced on April 28, 2022 to $5,500.00 and reduced again on May 26, 2022 to $5,250.00 before the listing was removed on May 31, 2022.

GM confirmed that the Tenants' lawyers had sent a settlement offer in April 2022. GH argued that TMF's LinkedIn shows that TMF remained with his employer for several more months before moving to another job in August 2022.

The Tenants submitted (unsigned) written submissions which include the following evidence and arguments:

- The Tenants did not receive a notice of final opportunity to schedule a move-out condition inspection from the Landlord.
- The Landlord did not provide evidence or pictures to show a need for blind cleaning. The invoice for blind cleaning may have included cleaning the downstairs' tenants' blinds.

- The Tenants left the curtains in the rental unit. The curtains had been vacuum-sealed to prevent damage.
- The Landlord had given “full” and “unconditional” permission for the Tenants to move the closets.
- The Landlord listed the rental unit at an unachievable rate and discouraged renters by listing the property for sale on or around April 18, 2022. The Landlord was able to re-rent the rental unit when the rent was reduced to an amount similar to what the Tenants had been paying.
- It is denied that the conversation between TMF and the Landlord occurred as alleged on January 12, 2022. TMF had a 3 year commitment for his job, but the Tenants had to return to their home country due to TMF needing a major surgery that was not available in Canada. TMF had to negotiate a release from his contract and was unemployed before finding conditional employment.
- The ads submitted by the Landlord have “noticeable font and discoloration issues” as if they have been altered.

The Tenants’ written submissions also summarized their monetary claims as follows:

- $1,250.00 for landscaping fees – The Landlord had not disclosed that such fees were not for a professional landscaper. This was a “hidden rent fee”. The Landlord would at most rake the leaves and pick up a few branches, leaving the rubbish for the Tenants to carry off as trash. The Tenants had equipment to perform all yard work. The Tenants considered this to be a material breach by the Landlord.
- $364.63 for utilities – The Landlord was to ensure that a full third of the utilities would be covered by the downstairs tenants. However, the Tenants only received $100.00 per month towards the downstairs tenants’ portion of utilities.
- $5,143.69 for emergency veterinarian bills – The Landlord entered the rental unit “unlawfully” and “without notice” on October 31, 2021. The Tenants’ pet cat escaped for several days as a result and was found injured, requiring emergency and follow-up care.
- $621.77 for custom closets – The master bedroom closet was held together by strings and fell upon physical touch. The Landlord agreed to pay the Tenant the costs to build a custom closet organizer for the master suite.
- $2,115.09 for legal fees – The Tenants retained legal counsel to find out their rights, since they are non-Canadian citizens. The Landlord refused to have meaningful communication or acknowledge the Tenants’ letters.
- $9,134.30 for moving expenses – The Landlord failed to address critical issues affecting the tenancy. The Tenants gave the Landlord approximately 77 days’

advance notice of departure. The Landlord engaged in harassing and aggressive behaviour, and entered the rental unit without notice. The Tenants felt unsafe in the rental unit due to the Landlord.

Analysis

1(a). Is the Landlord entitled to compensation of $5,250.00 for loss of rental income in March 2022?

Section 45(3) of the Act states that "If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice."

In this case, I find the Tenants' lawyers' letters to the Landlord dated February 14, 2022 and April 13, 2022 do not make any reference to the subject matter contained in the Disputed Correspondence, and in particular the Tenants' letter dated December 13, 2021. I find it highly unusual that the Tenants' December 13, 2021 letter demonstrates an implied understanding of section 45(3) of the Act, with references to "material terms" and "BC Residential Tenancy Policy Guidelines", while the February 14, 2022 and April 13, 2022 letters make no such references and only assert illegal contract as the basis for voiding the tenancy. I am therefore very doubtful that the Disputed Correspondence had been sent to the Landlord on the dates alleged by the Tenants. I also note that neither of the Tenants attended this hearing to give testimony under oath, while the Landlord gave testimony under oath to say that he did not receive the Disputed Correspondence on the dates of such correspondence. Therefore, I prefer the Landlord's evidence that he did not receive the Disputed Correspondence as claimed by the Tenants. I am therefore not satisfied that prior to ending the tenancy, the Tenants had given the Landlord written notice of the Landlord's failure to comply with material terms, which is required under section 45(3) of the Act.

Moreover, I am not satisfied that the Tenants have proven that the Landlord has in fact breached a material term of the parties' tenancy agreement.

Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms ("Policy Guideline 8") defines a "material term" as "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement". Policy Guideline 8 further states:

> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.
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> The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

I find the Tenants complained about landscaping, utilities, their cat's veterinarian bills, and smoking by the downstairs tenants in their letter dated December 13, 2021. However, I am not satisfied that the Landlord has breached any material terms of the tenancy agreement with respect to these complaints.

As will be discussed in more detail under the Tenants' claim for compensation, I do not find the Landlord to have breached a term in the tenancy agreement with regard to landscaping or the Tenants' vet bills.

I am not satisfied that the Tenants' dispute about $61.48 in alleged utility fees owing from the Landlord, which the Tenants themselves described in the December 13, 2021 letter as "relatively minor", to constitute a breach of a material term that is sufficiently serious to give the Tenants the right to terminate the tenancy. Moreover, I find there is insufficient evidence to show that the Tenants are in fact owed the amounts they say they are owed for the utilities. I find the Tenants have provided different figures in their correspondence to the Landlord, and have not explained how they calculated their final figure of $364.62 for utilities owing. I note that this claim is denied by the Landlord.

I find the Tenants have not provided sufficient details (e.g. dates, times, descriptions of conduct) or any corroborating evidence (e.g. photographs, videos, witness statements etc.) to substantiate their complaint about the downstairs tenants smoking tobacco or marijuana.

I conclude the Tenants have not shown that the Landlord breached a material term of the tenancy such that the Tenants were entitled to end the tenancy under section 45(3) of the Act.

In addition, I reject the argument in the Tenants' previous lawyers' letters that the tenancy agreement was an illegal contract due to a bylaw contravention, such that the Tenants could have ended the tenancy at any time. According to Residential Tenancy Policy Guideline 20. Illegal Contracts ("Policy Guideline 20"), "statutory illegality" arises where a tenancy agreement is considered "illegal", void, and unenforceable due to the rental of the premises being "in violation of a provincial or federal statute". However, Policy Guideline 20 specifically states that "municipal by-laws are not statutes for the purposes of determining whether or not a contract is legal, therefore a rental in breach of a municipal by-law does not make the contract illegal" (emphasis added).

I accept the Landlord's testimony that TMF had asked him about being laid off on January 12, 2022. I find the Tenants had other motives for ending the tenancy early. For example, I find the Tenants mentioned in their written submissions that they had to return to their home country due to TMF needing a major surgery that was not available in Canada.

Based on the foregoing, I find the Tenants were in breach of their fixed-term tenancy agreement by vacating at the end of February 2022, prior to the expiry of the fixed term on September 30, 2022.

Section 67 of the Act states:

> **Director's orders: compensation for damage or loss**
> 67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent ("Policy Guideline 3") states:

> Where a tenant vacates or abandons 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 (section 7(1) of the RTA and the MHPTA). 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.
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> […]
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> In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes rerenting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.
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> […]
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> In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. The tenant is not entitled to recover any remainder. […]
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> (emphasis added)

In this case, I find the Tenants vacated the rental unit in breach of their fixed-term tenancy agreement and that the rental unit was vacant for the entire month of March 2022.

However, I also accept the Tenants' evidence, which I find was not disputed by the Landlord, that the rental unit was re-listed in February 2022 at a much higher rent of $5,990.00. I find the Landlord did not lower the listed rent in March 2022. I accept the Tenants' undisputed evidence that the property was listed for sale on April 18, 2022, which I find to be supported by a copy of the sales listing submitted into evidence. Based on the Zillow records submitted by the Tenants, I find the rent was later lowered to $5,500.00 on April 28, 2022 and lowered again to $5,250.00 on May 26, 2022. I accept the Landlord's testimony that the rental unit was re-rented on May 31, 2022 at $5,250.00 per month, which I find to be $10.00 more per month than what the Tenants were paying.

Based on the foregoing, I am not satisfied that the Landlord did everything reasonable to minimize his loss of March 2022 rent, since the Landlord had listed the rental unit for a much higher price throughout March 2022. Nevertheless, I accept the Landlord's testimony that he started re-listing the rental unit on February 22, 2022, which was not long after he received notice of the Tenants' intention to vacate in their lawyers' letter dated February 14, 2022. Furthermore, I find the screenshots submitted by the Landlord show that he had advertised the rental unit on many different websites. Therefore, I conclude the Landlord partially mitigated his loss of rental income in March 2022, which I fix at 50%.

Furthermore, I find the Landlord's new tenants paid $10.00 more in rent per month from May 31, 2022 to September 30, 2022, for a total of $40.00 over four months. I find this amount should be set off against the amount owing by the Tenants to the Landlord for loss of rental income in March 2022, as per Policy Guideline 3 above.

Accordingly, I award the Landlord 50% × $5,240.00 - $40.00 = $2,580.00 to the Landlord for loss of rental income in March 2022.

1(b). Is the Landlord entitled to compensation of $1,184.08 for damage that the Tenants, their pets or their guests caused during the tenancy?

On the Landlord's application, the Landlord provided the following list of items for requesting compensation:

Item	**Amount**
Carpet Cleaning	$262.50
Moving Heavy Closets	$200.00
Home Cleaning	$240.00
Missing Curtains	$481.58
Total	**$1,184.08**

Section 32(3) of the Act states that a "tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

The Landlord submitted an invoice for cleaning blinds in the amount of $370.44. The Landlord did not submit any invoices for carpet cleaning or home cleaning. According to

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises ("Policy Guideline 1"), the "tenant is expected to leave the internal window coverings clean when he or she vacates". However, I find there is insufficient evidence to suggest that the Tenants had left the blinds dirty and requiring cleaning. I note that section 20(e) of the Act states that a landlord must not "require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement". Therefore, in the absence of sufficient evidence showing the blinds to have been left dirty, I do not allow the Landlord's claim of $370.44 for cleaning the blinds.

The amounts for carpet cleaning and home cleaning are also disallowed due to a lack of supporting invoices as well as lack of evidence to show that the rental unit was not clean.

I accept the Landlord's testimony that the curtains in the rental unit are missing. I find the Tenants' evidence indicates that they had removed the curtains to prevent damage. I note the Tenants' written submissions further say that the curtains had been left behind in the rental unit when the Tenants vacated the property. However, I am unable to conclude where the curtains have been left, if at all, based on the photographs submitted into evidence. As such, I allow the Landlord's claim of $481.58 to replace the missing curtains.

I accept the Landlord's testimony that the Tenants had moved three heavy closets to a different room without his permission and did not move them back at the end of the tenancy. I find the Tenants say in their written submissions that the Landlord had given permission, but I do not find any evidence to support this. I find the handyman charge of $100.00 based on the invoice submitted by the Landlord to be reasonable in the circumstances. Therefore, I allow the Landlord's claim of $100.00 for moving the closets.

Based on the foregoing, I conclude that the Landlord is entitled to recover $481.58 (missing curtains) + $100.00 (moving closets) = $581.58 under this part.

1(c). Is the Landlord entitled to compensation of $7,220.70 for monetary loss or other money owed?

The Landlord's application claims $7,220.70 for non-refundable trip charges incurred by the Landlord.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss ("Policy Guideline 16") states:

> **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.
>
> (emphasis added)

I find the Landlord submitted flight booking confirmations for himself and two family members which show that they were set to depart Canada on February 18, 2022 and return on March 12, 2022. I find the booking confirmations state that the tickets are non-refundable. However, I am not satisfied that the Landlord and his family members were prevented from going on this trip due to being told that the Tenants were moving out of the rental unit. I find that the Landlord was aware that the fees were non-refundable and that the flights could not be rescheduled. I find the Landlord has not provided sufficient evidence to explain why he had to stay behind in person. I find the Landlord could have hired agents for cleaning and re-renting the rental unit without forfeiting his trip. I find the Landlord has not explained why his family members also had to forfeit their trips. I find the costs for forfeiting the trip for three people to exceed the loss of rental income for an entire month.

Therefore, I do not find that any non-refundable fees incurred by the Landlord to constitute loss or damage that resulted from the Tenants' breach of the fixed-term tenancy agreement. Even if the Landlord's decision to cancel the trip was solely due to being told that the Tenants were moving out early, I would find that the Landlord has not acted reasonably to avoid forfeiting the trip and incurring the non-refundable fees.

The Landlord's claim under this part is dismissed without leave to re-apply.

2. Are the Tenants entitled to compensation of $18,729.47 for monetary loss or other money owed?

On the Tenants' application, the Tenants provided the following list of items for requesting compensation:

Item	**Amount**
Landscaping Fees	$1,250.00
Unpaid Utilities	$364.62
Emergency Veterinarian Bills	$5,143.69
Custom Closet Built	$621.77
Lawyer Fees	$2,115.09
Moving Expenses	$9,134.30
Filing Fee	$100.00
Total	**$18,729.47**

Regarding the Tenants' claim of $1,250.00 for landscaping fees, I find the parties' tenancy agreement does not mention that the Tenants were paying any fees for landscaping specifically. I find the agreement simply states that rent is $5,240.00 per month, and that "Lawn mowing, gardening, trimming, landscaping" are included in the rent. I do not find the tenancy agreement to require the Landlord to hire a professional landscaper or otherwise prohibit the Landlord from providing these services himself. I find there is insufficient evidence to show that the Landlord is in breach of the tenancy agreement. Accordingly, I dismiss the Tenants' claim for $1,250.00 in landscaping fees without leave to re-apply.

The Tenants claim unpaid utilities of $364.62. The tenancy agreement states that "The Resident [the Tenants] must apply before the occupancy date to the appropriate authorities for utilities such as electricity and gas. The upper level (first and the second floor) tenants agree to pay 65% of monthly gas and hydro bills and basement residents pay 35%. (FYI presently basement residents pay $100/ month which is more than 35% of total monthly utility bills)." Next to this clause is a handwritten note which states that "Lower floor's payment will be etransferred at end of each month to you." I find the Tenants have submitted copies of their BC Hydro and FortisBC bills into evidence. However, I find the Tenants have not explained how they calculated the amount of

$364.62 still owing by the Landlord, presumably for utilities consumed by the downstairs tenants. As per Policy Guideline 16 above, the party who suffered the damage or loss must “prove the amount of or value of the damage or loss”. I find the Tenants have not provided sufficient evidence in this regard. The Tenants’ claim for $364.62 in utilities is dismissed without leave to re-apply.

I note Policy Guideline 1 states that “A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.” According to section 3 of the Regulations, a term of a tenancy agreement is "unconscionable" if the term is “oppressive or grossly unfair to one party”. I caution the Landlord to refrain from continuing to require tenants to put utilities in their names for portions of the premises that the tenants do not occupy.

The Tenants claim $5,143.69 for emergency veterinarian bills. I find the Tenants have not provided sufficient evidence to show that their cat was injured due to the Landlord having not complied with the Act, the regulations, or the tenancy agreement. I find the bills submitted refer to items such as “dental surgery”, “dental x-ray”, “growth removal and incisor extraction”, anesthesia, cleaning, and polishing. I find the Tenants have not provided sufficient details about the cause or nature of their cat’s condition. I am not satisfied that these veterinarian bills have anything to do with the Landlord. I dismiss the Tenants’ claim of $5,143.69 in emergency veterinarian bills without leave to re-apply.

Regarding the Tenants’ claim of $621.77 for custom closets, I find there is insufficient evidence to show that the Landlord had requested the Tenants to build the closets or had agreed to pay for the Tenants’ materials. The Tenants’ claim under this part is dismissed without leave to re-apply.

The Tenants claim legal fees of $2,115.09. Section 67 of the Act allows a party to claim compensation for damage or loss resulting from a party not complying with the Act, the regulations or a tenancy agreement. Generally speaking, legal fees are not a recoverable expense under the Act, as there is no requirement for the parties to be legally represented. I find the Tenants could have represented themselves when negotiating and communicating with the Landlord. I note the Tenants could have also contacted the Residential Tenancy Branch for information. Based on the above, I dismiss the Tenants’ claim for legal fees without leave to re-apply.

The Tenants claim moving expenses of $9,134.30. I am not satisfied that these expenses were losses or damages that resulted from the Landlord's non-compliance with the Act, the regulations, or the tenancy agreement. I find the Tenants have not shown that the Landlord breached a material term of the tenancy. I find it was the Tenants who chose to end the tenancy and move out of the rental unit. The Tenants' claim for moving expenses of $9,134.30 is therefore dismissed without leave to re-apply.

I note the Tenants have duplicated their claim for the filing fee which I will address below.

3. Are the parties entitled to recover the filing fee for their respective applications?

The Landlord has been partially successful in his application. I award the Landlord recovery of his filing fee under section 72(1) of the Act.

The Tenants have not been successful in their application. I decline to award the Tenants reimbursement of their filing fee under section 72(1) of the Act.

4. Who is entitled to keep the security and/or pet damage deposit?

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 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.

I find there is insufficient evidence to suggest that the Tenants had provided the Tenants' forwarding address to the Landlord in writing before the parties had filed for

dispute resolution. The parties' evidence indicates that the Landlord's NDRP Package was delivered to the office of the Tenants' former lawyers in the dispute city. I find the destination address on the Tenants' moving invoice to be a different address from that which is stated as the Tenants' address for service on the Tenants' NDRP Package.

Therefore, I find that section 38(1) of the Act had not been triggered when the Landlord submitted his application on March 14, 2022. However, since the Landlord acknowledged receipt of the Tenants' NDRP Package, which provides the Tenants' current address for service, I find the Landlord was later sufficiently served with the Tenants' forwarding address in writing pursuant to section 71(2)(c) of the Act.

I find the Landlord did not provide the Tenants with two opportunities for the move-out inspection required under section 25(2) of the Act and section 17 of regulations. I find the Landlord did not propose a second opportunity for inspection by providing the Tenants with notice in the approved form, as required under section 17(2)(b) of the regulations. As such, I find the Tenants have not extinguished their rights to the deposits under section 36(1) of the Act.

Section 38(4)(b) of the Act states that a landlord may retain an amount from a security deposit or pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount. In this case, any excess deposit that the Landlord is not authorized to retain must be returned to the Tenants.

The total amount awarded to the Landlord in this decision and the balance of the deposits to be returned to the Tenants are calculated as follows:

Item	**Amount**
Loss of Rental Income for March 2022	$2,580.00
Curtain Invoice	$481.58
Invoice for Moving Closets	$100.00
Filing Fee	$100.00
Total (to be retained by Landlord)	**$3,261.58**
Less Security Deposit ($2,620.00), Pet Damage Deposit ($2,620.00), and Fob Deposit ($200.00) held by Landlord	($5,440.00)
Balance (to be returned to Tenants)	**($2,178.42)**

Conclusion

The Landlord is entitled to recover $3,261.58 from the Tenants pursuant to sections 67 and 72 of the Act. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain **$3,261.58** from the security deposit, pet damage deposit, and fob deposit totalling $5,440.00 held by the Landlord.

Pursuant to section 65(1)(d) of the Act, I order the Landlord to return the balance of the deposits in the amount of **$2,178.42** to the Tenants. I grant the Tenants a Monetary Order of $2,178.42. This Order may be served on the Landlord, filed in the Provincial Court of British Columbia, and enforced as an Order of that Court.

The balance of the Tenants' application is dismissed without leave to re-apply.

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: December 14, 2022

Residential Tenancy Branch