



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent in the amount of \$5,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This hearing was reconvened from a prior teleconference hearing on October 18, 2022 before a different arbitrator. He adjourned the hearing so it could be reconvened in person. He issued an interim decision on October 18, 2022 and indicated that he was not seized of this matter.

This hearing was conducted in person at the Burnaby offices of the Residential Tenancy Branch (the "**RTB**"). Tenant MAL attended the hearing on behalf of both tenants. Two sign language interpreters assisted her. The landlord was represented at the hearing by its development manager ("**RX**") and its office manager ("**LC**"). All were given a full opportunity to be heard, to present affirmed testimony and to make submissions.

RX testified, and MAL confirmed, that the landlord served the tenants with the notice of dispute resolution package and supporting documentary evidence. Tenant MAL stated that she did not serve the landlord with the evidence the tenants provided to the RTB. She testified that this documentary evidence related to the tenants' application it brought against the land (file number on cover of this decision) and did not relate to the present application. As such, I exclude the documents the tenants provided the RTB from the evidentiary record.

### Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$3,750;

- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

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

The parties entered into a written, fixed term tenancy agreement starting February 1, 2018 and ending January 31, 2019. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent was \$2,500 and was payable on the first of each month. The tenants paid the landlord a security deposit of \$2,500, which the landlord continues to hold in trust for the tenants.

On September 9, 2021, the landlord served the tenants with a four month notice to end tenancy for demolition of the rental unit (the "**Notice**"). The tenants vacated the rental unit on or about December 31, 2021.

RX testified that the tenants did not pay any rent for the months of October, November, or December, 2021. RX stated that the landlord is seeking to recover \$5,000 in compensation for unpaid rent, as he acknowledged the tenants are entitled to an amount equal to one months rent by operation of the Act, due to the Notice being issued.

Tenant MAL admitted that the tenants did not pay any rent for October, November, or December 2021. She testified that the tenants and RX reached a verbal agreement sometime after October 12, 2021, whereby the tenants would not have to pay any rent for the duration of the tenancy on the condition that they moved out prior to the effective date of the Notice (January 31, 2022).

RX denied that any such agreement was reached. He stated that in early October, 2021, he attempted to negotiate an agreement in person whereby the tenants would vacate the rental unit prior to the effective date of the Notice, but was unsuccessful. He stated that on October 12, 2021, he sent the tenants an e-mail asking them to let him know the amount they would like to be paid in exchange for moving out by the end of October 2021. He testified that he did not receive a response. He denied meeting with the tenants after sending this e-mail to discuss the possibility of reaching a settlement.

RX pointed to several emails he sent the tenants (December 17 and 20, 2021, and January and 12, 2022) asking for payment of October and November 2021 rent, and the tenants' responses which did not dispute that rent was owing or that any agreement had been reached, as evidence which supported the landlord's position.

### **Analysis**

Section 26(1) of the Act states:

#### **Rules about payment and non-payment of rent**

**26(1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the documentary evidence presented and the tenant's testimony, I find that the tenants monthly rent was \$2,500. I also find that the tenants did not pay any amount of their monthly rent for October, November, or December 2021.

I do not find there is sufficient evidence to support the tenants' assertion that the parties entered into an agreement which relieved the tenants of their obligation to pay rent for October, November, or December 2021. I accept that the parties may have attempted to negotiate such an agreement, but do not find that any agreement was reached. Had such an agreement been reached, I would have expected the tenants to have referred to it in their responses to RX's emails asking for payment of rent.

Where the testimony of RX and MAL differs I prefer that of RX, as it is more in accordance with the preponderance of probabilities.

Accordingly, I find that the tenants are required to pay the landlord \$5,000, representing rental arrears for October and November 2021 (the tenants are entitled to one months' free rent per section 51(1) of the Act, which offsets the December arrears).

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

**Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$3,850, representing the following:

Description	Total
Arrears	\$5,000.00
Filing fee	\$100.00
Security deposit credit	-\$1,250.00
	<b>\$3,850.00</b>

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: January 23, 2023

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Residential Tenancy Branch