



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **Introduction**

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

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

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' application and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlords' application and evidence. The tenant did not serve the landlord with their evidentiary materials. As these documents were not properly served in accordance with section 88 of the *Act*, the tenant's evidence was excluded for the purposes of this hearing.

### **Issue(s) to be Decided**

Are the landlords entitled to a monetary award for losses arising out of this tenancy?

Are the landlords entitled to recover the filing fee?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, 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.

Both parties entered into a fixed term tenancy that was to begin on June 7, 2022, and end on September 30, 2022. Monthly rent was set at \$1,495.00, payable on the first of the month. The tenant paid a security and pet damage deposit of \$750.00 each deposit, which the landlords still holds.

The landlords filed this application to retain the tenant's deposits to cover their losses due to the early termination of this fixed term tenancy. The losses include time and expenses spent interviewing prospective tenants, and preparing the rental unit for rent. The landlord testified that the tenant informed the landlords on June 8, 2022 that they did not want to continue with the tenancy. The landlord testified that as the month had already started, they were unable to find a new tenant for that month. The landlord testified that it took them approximately a month to find a new tenant after the tenant had changed their mind.

The tenant does not dispute that they had decided to not continue with the tenancy. The tenant testified that they were arriving from a different province, and when they arrived after a week long drive on June 8, 2022, the home did not have electricity, the place was not clean, and the place was not maintained. The tenant testified that in addition to the payment of the deposits, they had sent an e-transfer on June 8, 2022 at 11:23 a.m. to the landlords for pro-rated rent for June 2022. The tenant confirmed the email the e-transfer was sent to, and confirmed in the hearing that this was deposited by checking their bank account during the hearing.

### **Analysis**

Section 44 of the *Act* states how a tenancy may be ended:

#### **How a tenancy ends**

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 [*tenant's notice*];

- (i.1) section 45.1 *[tenant's notice: family violence or long-term care];*
- (ii) section 46 *[landlord's notice: non-payment of rent];*
- (iii) section 47 *[landlord's notice: cause];*
- (iv) section 48 *[landlord's notice: end of employment];*
- (v) section 49 *[landlord's notice: landlord's use of property];*
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify];*
- (vii) section 50 *[tenant may end tenancy early];*

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

## **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) 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.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

I find that the tenant had terminated this tenancy in a manner contrary to Sections 44 and 45 of the *Act*. The landlords did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. No applications for dispute resolution have been filed by the tenant pertaining to this tenancy.

The evidence of the landlords is that due to the tenant's failure to end the tenancy in accordance with the *Act*, they suffered a monetary loss as they had to find a new tenant. I note that the burden is on the applicant to support the amount of their loss. In this case, the landlords did not provide sufficient evidence to support the amount of the losses claimed in this application, including details of the new tenancy or receipts or invoices associated with moving of the furniture referenced in this application.

Furthermore, I am not satisfied that the landlords had provided sufficient evidence to support their efforts to mitigate the tenant's exposure to the landlords' monetary losses as is required by section 7(2) of the *Act*.

I find that the tenant had provided detailed evidence to support that they had paid the landlords their portion of the rent for June 2022, as well as the deposits. I am not satisfied that the landlords had provided sufficient evidence to support any monetary losses associated with the early end of this tenancy that exceed the rent already paid for June 2022. On this basis, I dismiss the landlord's monetary claim for losses associated with this tenancy without leave to reapply. I order that the landlords return the tenant's security and pet damage deposits plus applicable interest to the tenant within 15 days of receiving this decision. The RTB Online Interest Tool can be found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html> .

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlords were not successful with this claim, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application. The landlords must bear the cost of this filing fee.

### **Conclusion**

The landlords' 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: April 13, 2023

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Residential Tenancy Branch