



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEXFAM INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDL-S

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlords.
2. Payment of \$3,500.00 of unpaid rent.
3. Retention of security deposit as compensation for damage to the rental unit.

The corporate landlords appeared at the hearing on 19 June 2023 by way of agents. The tenants did not appear.

Preliminary Matter - Non-appearance at the Hearing

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 0930 hours and ended about an hour later. I confirmed:

1. that the landlords sent a copy of this Notice of Hearing to the address of the rental unit *via* registered mail and served it personally on the tenants on 26 April;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing; and
3. by reviewing the teleconference system, that the landlords and I were the only ones who had called into this teleconference;

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenants failed to attend this hearing, but I conducted it in their absence. The landlords' statements satisfied me that they had correctly notified the tenants of this hearing and how to participate.

Issue(s) to be Decided

Is the tenancy at an end?

Do the tenants owe the landlords rent?

Can the landlords retain the security deposit as compensation to damage done to the unit?

Background and Evidence

Rent is \$550.00 *per* month and the tenants paid a security deposit of \$300.00.

Since June 2022, the tenants failed to fully pay rent over a series of months, including no rent at all for (among other months) January 2023. By 14 April, the total amount of unpaid rent was \$3,500.00.

As a result, the landlords drafted a 10-day Notice to End Tenancy for Unpaid Rent [the 'Notice']. The landlords swore that, in drafting the Notice on or about 14 April, they:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 15 April 2023; and
5. stated the basis for the Notice as the tenants' failure to pay rent in the amount of \$550.00 due on 4 January 2023.

They served this Notice on 14 April, along with a two-page letter [the 'Letter'], and a witness saw the landlords personally serve both the Notice and the Letter on the tenants.

This Letter had as its' subject, '**UNPAID RENT**', bolded and underlined. It began, 'The present to to [sic] let you know that you have not paid us rent for the following months:' and went on to list the months for which the tenants had failed to pay rent, and in what amounts, for the period between June 2022 to April 2023.

The Letter continued: '...if you cannot cover the payments anymore, we will ask you to vacant [sic] the apartment as soon as possible.' It concluded with:

'You have broken the two windows of the apartment [the 'Windows'] please kindly replace them as soon as possible[.] We have gave [sic] you several eviction letters, you have to comply with all these rules and bring you [sic] account up to date as soon as possible and you have to VACATE the apartment by April 15, 2023.'

The landlords signed this Letter, and then swore to me that the tenants signed it as well. On the copy of the Letter that the landlords submitted to the RTB is a signature under the name of the tenants, and the landlords swore that this is the signature of the tenants.

There is no record or evidence of the tenants disputing this Notice.

In addition to the broken Windows referred to in the Letter, the landlords also told me that the tenants had damaged the exterior door to the unit, such that it would no longer close. They submitted a photo of a damaged door. The landlords had no estimates of what it would cost them to replace the door, but said it would 'probably' cost them \$400.00.

Regarding the Windows, the landlords submitted the following:

1. photo's of two windows, each with broken panes, which the landlords swore were windows in the rental unit; and
2. a screenshot of a replacement window (including panes, frames and sashes), showing a cost of \$421.00 *per* window.

After serving the Notice and Letter on the tenants, the tenants paid some monies to the landlords: on 7 May, the tenants paid \$2,250.00, then on 9 June they paid a further \$1,650.00.

Analysis

Based on the evidence before me, I find that the Notice (served along with the Letter) is an effective notice: together, the Notice and Letter made it clear to the tenants why the landlords were issuing the Notice, and what the tenants needed to do in order to preserve the tenancy. I accept that the tenants signed the Letter, acknowledging its content.

Inexplicably, the landlords recorded the effective date of the notice as 15 April – one day after they signed it. But I am content to amend the effective date in the Notice *per* section 68 (1) of the *Residential Tenancy Act* [the 'Act'], as the tenants should have known from the face of the Notice that the move-out date was 10 days after they had received it.

I also find that the landlords personally served the Notice on the tenants on 14 April. There is no evidence that the tenants applied for dispute resolution after receiving this Notice. According, therefore, to section 47 (5) of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on 24 April 2023.

And so the landlords are entitled to exclusive possession of the rental unit.

Do the tenants owe the landlords rent?

In May and June the tenants paid a total of \$3,900.00 to the landlords. But this did not satisfy the debt the tenants owed. Consider:

	<i>credit</i>	<i>balance</i>
unpaid rent as of 14 April	\$0.00	\$3,500.00
\$550.00 for May rent, due 1 May	\$0.00	\$4,050.00
7-May payment	\$2,250.00	\$1,800.00
\$550.00 for June rent, due 1 June	\$0.00	\$2,350.00
9-June payment	\$1,650.00	\$700.00

The uncontroverted evidence, then, is that the tenants failed to pay \$700.00 of the rent owing.

Section 26 (1) of the Act places a positive obligation upon the tenants to pay rent, with which the tenants have not complied. They still owe \$700.00 to the landlords.

Can the landlords retain the security deposit as compensation to damage done to the unit?

Section 32 (3) of the Act reads: '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.'

Based on the uncontroverted evidence of the landlords, I am satisfied that the tenants damaged the door and the Windows.

But the landlords have not proven the cost of repairing the door: they guess it would probably cost \$400.00. This guess alone is insufficient proof. Furthermore, they did not give evidence that they had requested that the tenants repair the door, which would have satisfied the requirement that they try to first minimize the loss.

The landlords did request, in their Letter, that the tenants repair the Windows. And they have supported the cost of repairing the Windows with screenshots from a store's Website showing the cost of buying new windows.

But these screenshots show not just the panes: they include the frames, sashes, *etc.* Effectively, these are entirely new windows. The landlords did not provide evidence as to why the Windows needed to be replaced in their entirety. The photo's they submitted showed broken panes only. They have not convinced me that, for the Windows to be repaired, they must be entirely replaced.

Accordingly, the landlords cannot retain the security deposit to compensate themselves for repairs that need to be made to the unit.

I note also that the landlords accepted more than the half of one month's rent from the tenants as a security deposit, contrary to section 19 (1) of the Act. The landlords told me

that rent is \$550.00, and so the security deposit must not have been more than \$225.00.

As a result, I will reduce the amount the tenants owe for rent by the \$75.00 overpayment, *per* section 19 (2) of the Act. This brings the total owing to the landlords to \$625.00.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I also order that the tenants pay to the landlords \$625.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the tenants' deposit of \$300.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 23 June 2023