



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).

The Landlords' application for:

- A monetary order of \$14,490.00 for unpaid rent, and request to retain the security deposit,
- The Tenants to pay \$752.50 to repair damage caused during the tenancy,
- Compensation in the amount of \$243.76 for monetary loss or money owed,
- Reimbursement of the filing fee.

And the Tenants' application for:

- Compensation in the amount of \$27,420.00 for monetary loss or money owed,
- Return of their security deposit in the amount of \$2,750.00,
- Compensation in the amount of \$4,830.00 related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term.
- Reimbursement of the filing fee.

Landlords WC and TC and Agent BD attended the hearing.

Tenants RF and SL attended the hearing.

Service of the Dispute Resolution Proceeding Package (Proceeding Package) and Evidence

RF testified that the Tenants received the Proceeding Package and documentary evidence from the Landlords.

BD testified that the Landlords received the Proceeding Package from the Tenants, however, they did not receive any documentary evidence. RF testified that they did not file any documentary evidence as part of their application.

Preliminary Matters

BD stated that the Landlords amended their monetary claim on June 8, 2023 and served the revised #RTB 37 MOW to the Tenants. The Landlords changed their total monetary claim after calculating additional interest in the amount of \$676.23 on the unpaid rent and \$450.00 for strata move out fees.

I will not consider the amendment as it was not properly served as an amended application to the Tenant, as per the Residential Tenancy Branch Rule of Procedure 4.2.

RF testified that the Tenants are seeking the return of their security deposit in the amount of \$2,375.00 and they erred in noting \$2,750.00 on their application. As per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 4.2, I amend the Tenant's application for return of their security deposit to \$2,375.00.

Issue(s) to be Decided

Are the Landlords entitled to unpaid rent, and compensation for monetary loss or other money owed, and to retain the security deposit?

Are the Tenants entitled to compensation for monetary loss or money owed?

Are the Tenants entitled to the return of their security deposit?

Are the Landlords entitled to recover the filing fee?

Are the Tenants entitled to recover the filing fee?

Background and Evidence

Evidence was provided that this tenancy began in April 2022 and ended on March 31, 2023. The monthly rent was \$4,380.00 to be paid on the first day of each month. The Tenants paid a security deposit of \$2,375.00, which the Landlords continue to hold in trust. The parties did not complete a move in inspection of the rental unit. The move out inspection was completed on April 1, 2023. The Condition Inspection Report (CIR) is dated April 1, 2023 and is signed by the Tenant and Agent BD for the Landlord. The Tenants provided their forwarding address in writing on April 3, 2023. On April 1, 2023, and as noted on the CIR, the Tenant surrendered their security deposit in the amount of \$2,375.00.

BD stated that the Tenants did not pay rent for January, February and March 2023, and owe outstanding rent in the total amount of \$14,490.00. BD stated the Tenants were given email reminders of the outstanding rent. The Landlords filed the email communication as part of their documentary evidence.

RF testified that they withheld rent for three months due to inadequate HVAC and airflow issues with the rental unit. RF stated that they experienced these hardships throughout the year, which were worsened during the winter months as they had no heat in the rental unit. RF stated that the Landlords were aware of their concerns and only rectified the situation one week prior to them vacating the rental unit.

BD stated that the rental unit required repairs at the end of the tenancy, which included painting and patch of holes in the walls. BD stated that these damages are noted on the move out inspection report. The Landlords filed an invoice in the amount of \$200.00 as part of their documentary evidence.

BD stated that the rental unit required cleaning as noted during the move out inspection. The CIR notes dusty floors, carpets, walls, and cleaning required for the cabinets, doors, the refrigerator and the dishwasher. The Landlords filed a cleaning invoice in the amount of \$472.50 as part of their documentary evidence.

BD stated that the Landlords are claiming the loss of \$80.00 for a remote control.

BD stated that the Tenant agreed to pay for \$752.50 for the damages, cleaning and the cost of the remote control. RF testified that they agreed to these costs as noted by BD.

The Landlords have claimed monetary loss for the interest on the unpaid rent since January 2023.

RF stated that they are claiming \$27,420.00 for monetary loss and money owed by the Landlords. RF testified that the Landlords wanted increased rent for the rental unit and pressured them to vacate the rental unit. RF testified that the Landlords failed to fix the HVAC system issues and cancelled utilities without adequate notice. RF stated they took over utilities at this time. RF stated that with ongoing pressure from the Landlords and due to issues with the heating system, they felt pressured to vacate the rental unit.

RF stated that they are seeking compensation of \$4,830.00, specifically one month's rent, as the Landlords forced them to move out of the rental unit with continued harassment when they were in a fixed-term tenancy. RF stated that the Landlord has another residence but stated their parents may return from Hong Kong to reside at the rental unit. RF stated that they were pressured to move out of the rental unit for six months, and the Landlords planned to re-rent for increased monthly rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Are the Landlords entitled to a monetary order for unpaid rent, and compensation for monetary loss or money owed, to retain the security deposit?

Under section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or tenancy agreement, the director may determine the amount of, and order the party to pay, compensation to the other party. Further, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. Section 7(2) of the Act states a landlord or tenant who claims compensation of damage or loss that results from the other's non-compliance of the Act, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In this case, the Landlords are to prove that they took reasonable steps to mitigate or minimize the loss or damage being claimed.

The Landlords presented a claim for damages and loss in the amount of \$752.50. The Tenants accepts responsibility and agrees to pay for the cost of painting and patching, cleaning and the remote control, in the total amount of \$752.50. The Landlords provided invoices to prove the amount of the loss incurred by them. The Landlord mitigated or

minimized the loss by only proceeded with patching and repair work to address the damage to the walls.

I grant a monetary award for **\$752.50** for compensation for monetary loss or money owed as claimed by the Landlords.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

The Tenant admitted that they did not pay rent for January, February and March 2023, and vacated the rental unit on March 31, 2023. I find the Tenant did not have a lawful reason to deduct the rent, and they owe rent from January to March 2023 (\$4,830.00 per month). Further, the Landlords could not proceed with mitigation of loss, as the rental unit was still occupied by the Tenants. The Landlords are entitled to a Monetary Order for unpaid rent in the amount of **\$14,490.00**.

The security deposit of \$2,375.00 has accrued \$42.15 interest. I authorize the Landlord to retain the security deposit of \$2,417.15 in partial satisfaction of the unpaid rent.

I do not grant a monetary award for the interest on unpaid rent, as there is no such remedy under the Act.

Are the Tenants entitled to compensation for monetary loss or money owed?

I find the Tenants did not prove that the loss occurred due to the actions or neglect of the Landlord in violation of the Act, or the TA. If the Tenants had no heating and felt pressured to vacate the rental unit, I would expect them to take necessary steps to address the issues and provide proof of those actions. The Tenants could have brought their concerns for emergency repairs to the Landlord, as per the Act.

I find the Tenants did not prove that the fixed term tenancy ended due to the actions or neglect of the Landlord. As noted above, the Tenants could have sought remedy for their concerns as per the Act. Although RF stated that they felt pressured to leave, I find the Tenants were not under any legal obligation to vacate the rental unit.

The Tenants did not provide proof of the actual amount required to compensate for the claimed loss, nor did they provide what steps were taken to mitigate or minimize the loss being claimed.

For the above reasons, the Tenant's application for compensation for monetary loss or money owed is dismissed, without leave to reapply.

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security and pet damage deposit?

Section 38(4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

Based on the evidence before me, the Tenants agreed to and surrendered their security deposit of \$2,375.00 to the Landlord on April 1, 2023. As such, I find they are not entitled to a monetary order for the return of their security deposit.

Therefore, the Tenants' application for return of the security deposit is dismissed without leave to reapply.

Are the Landlords entitled to recover the filing fee?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the **\$100.00** filing fee paid for this application under section 72 of the Act.

Are the Tenants entitled to recover the filing fee?

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant the Landlords a Monetary Order in the amount of **\$12,925.35** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent.	\$14,490.00
A Monetary Order for compensation of monetary loss or money owed	\$752.50
Minus Security Deposit + interest	\$2,417.15
Authorization to recover the filing fee for this application from the Tenants under section 72 of the Act.	\$100.00

	Total Amount	\$12,925.35
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The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

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 8, 2023

Residential Tenancy Branch