



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, LRSD, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord and both named tenants attended the hearing, and the landlord was represented by a person identified as a co-landlord and agent for the landlord. The landlord's agent and both tenants gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, and although the tenants' evidence was not provided within the time limits set out in the Rules of Procedure, the landlords agree that it has been received and reviewed. Therefore, all evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on November 1, 2022 and was to revert to a month-to-month tenancy after November 1, 2023. A copy of a

portion the tenancy agreement has been provided for this hearing and it is silent on the date that the tenancy commenced. However, the landlord's agent testified that the tenancy ended on October 27, 2023 and the landlord received a forwarding address from the tenants on November 10, 2023 by text message.

Rent in the amount of \$2,700.00 was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling.

On October 27, 2023 the tenants gave notice to end the tenancy by email stating that the rental unit would be cleaned by November 27, 2023. It also claimed that the tenancy is frustrated.

The landlord's agent also testified that the tenants gave notice to end the tenancy on October 15, 2023 indicating that the tenants were vacating and were ready for an inspection on October 31, 2023 and that rent for the final month would be half a month. The landlord's agent believes the tenants vacated on October 15, 2023. The parties communicated back and forth about when they would actually be moving, advising that if the landlord didn't mitigate about lead paint in the rental unit, they would leave. The landlord's agent wasn't sure which notice to end the tenancy was the tenants' official notice.

The parties agreed to meet on October 31, 2023 for a condition inspection. The landlord's agent and one of the tenants attended. The landlord was able to re-rent commencing November 15, 2023, and the landlord's agent told the tenants that half a month's rent was still owing.

The landlord's agent does not agree that the tenancy was frustrated. On October 5, 2023 the landlord's agent was notified by the tenants of the presence of lead paint, and the landlord's agent replied on October 10, 2023 stating that it would be done when the tenants would provide access. Regular maintenance was agreed to by the landlord's agent to mitigate the presence of lead paint on 2 windows in the kitchen and 1 window in each of 2 bedrooms. The landlord didn't give notice to enter and the tenants would not agree because they wanted a professional to do it. The landlord's agent started painting on November 1, 2023, wanting to do so himself. The landlord's agent told the tenants that he had consulted with experts and that the proposed repairs were reasonable, and the details of the work was provided to the tenants. The tenants' response was that since doing it himself, they were leaving.

The landlord's agent took samples of the paint and got a kit, put in vinegar and samples of paint. The tests did not show lead on all surfaces that the tenants had complained about, and the repairs were completed after the tenants left.

The tenants said they conducted their own tests and concluded there was lead.

**The first tenant** (GK) testified that it would not be right to pay the rent. When the tenants were initially shown the home in September, 2022 it was dark and the tenants requested a second viewing in the daytime, but the landlord refused. The tenants didn't see the condition of the paint until they were moved in.

The landlord's agent didn't attend until 17 days after the tenants reported the paint, even though he lived next door, and no reason for that was given. The landlord's agent wanted the tenants to remain with windows painted shut for the winter, with no ventilation over the stove. The tenants were able to get the windows open, but got a lead paint testing kit. The landlord got the same results as the tenants in other places.

The tenant read on a website that the tenancy could be deemed frustrated, and it made sense due to a health hazard, although the landlords do not consider it frustrated.

The tenant's children and wife got sick, and test results have been provided for this hearing. The tenants consulted with professionals who said that the tenants were right to move out and recommended a HEPA treatment to all of their belongings at an expensive cost.

The tenants did not give a notice to end the tenancy, but on October 14, 2023 the tenant told the landlords that they were moving out. The tenants fully moved out on October 31, 2023 and the parties did the inspection.

**The second tenant** (SK) testified that in the photographs provided by the landlord shows paint crumbling, bad chipping, and cracked. A friend told the tenant it looked like lead paint. The tenant ordered 2 testing kits, 1 for \$20.00 and \$100.00 for a better one, and re-tested. The second test showed positive. The tenant showed a photograph to a consulting firm and was told that the way it was cracking meant likely a high concentration of lead and asbestos. The tenant also read that a professional should attend to see what the concentration is.

Lead paint was on the windows and doors, so that every time they are opened or closed, friction or abrasion need to be remediated. A person cannot just paint over it,

and professionals told the tenant it should be remediated. The tenant told the landlord to get it assessed and remediated professionally, but the landlord said she didn't have the money to do so and would not hire any professionals.

Levels of lead are associated with lower IQ, hyperactivity in children, aggressive behaviour, stomach aches and headaches. The tenants' 4 year old child suffered all of that. The tenants' doctor said that the child's blood test showed elevated levels of lead in the blood. A urine test was also done.

After the tenants moved in the single pane windows were covered in December until spring, which protected the tenants' children for a time, and were not opened during the winter. There was no other place that the children could have been exposed.

The tenant purchased lead mitigation and cleaning supplies and the person recommended a HEPA vacuum and masks while the tenants moved furniture out of the house as well as lead safe soaps to clean toys, furniture and any belongings that could be cleaned with the wipes. There are different recommendations depending on the condition of the paint, the concentration of lead and the location, such as on walls, windows or doors. The landlord's approach was wrong.

#### SUBMISSIONS OF THE LANDLORD:

The landlord has never experienced tenants so worried and so unhappy. During the first month, the tenant was a perpetual complainer about different issues from day 1. The second viewing was requested because the house didn't have closets and the kids were afraid to move into a new house. The landlord said that the landlords would pay for insulation, and told the tenants about another rental of a friend who had new windows. Neither the landlord nor the landlord's son had any health problems in the house.

#### SUBMISSIONS OF THE TENANTS:

The professional that the tenant spoke with and multiple websites state that a landlord should not do it themselves due to a bad state of decay. Considering the costs the tenants incurred, the landlords are lucky that the tenants are not suing the landlords.

#### Analysis

In this case, the landlords claim half a month's rent, or \$1,350.00 and an electric bill of \$74.08 and permission to keep the security deposit in partial satisfaction.

The tenants gave notice to end the tenancy on October 15, 2023 effective October 31, 2023. The rental unit was re-rented for November 15, 2023. The tenants also gave notice to end the tenancy by email on October 27, 2023 and said the place would be cleaned by November 27, 2023 claiming it was a frustrated tenancy and the landlords were not sure which was the official notice.

I have reviewed all of the evidence, which includes an email from the landlord to the tenant indicating that the presence of lead paint in the children's bedrooms poses a risk to their health, but suggests that accommodations can be made to temporarily relocate the children to another bedroom while mitigation work is completed.

The tenants indicated to the landlords in an email on October 17, 2023 that: According to the Special Circumstances of the Frustrated Tenancy clause, "neither the landlord nor the tenant has to give notice to end the tenancy."

I do not accept that the tenancy was frustrated. Just because the landlord did not have the funds to retain a "professional" does not constitute a frustrated tenancy. A landlord is required to provide and maintain a rental unit in a state of decoration and repair, having regard to the age, character and location of the rental unit that makes it suitable for occupation by a tenant. If the landlord is unable to do so because of fire, flood or other events, the tenancy may be found to be frustrated.

In this case, I find that the tenants were frustrated because they were not satisfied with the responses from the landlords and submitted that a professional was required. I see no evidence to support that, nor am I certain what kind of "professional" ought to have done the remediation. There is nothing in the evidence to indicate that the landlords could not have done the remediation themselves. The landlords' submissions state that the landlord was told that his approach was good, so long as the landlord cleaned up after. Having found that the tenancy was not frustrated, the tenants' position that a notice to end the tenancy under the *Act* was not required, is not justified.

The tenants signed a fixed-term tenancy agreement to expire on November 1, 2023 but left the rental unit on or about October 15 or 27, 2023, almost a year after moving in.

Even in a month-to-month tenancy, or after the end of a fixed-term, a tenant is required to give no less than 1 month's notice to end the tenancy, which must be received by the landlord before the date rent is payable, which in this case is the 1<sup>st</sup> day of the month.

The tenants' correspondence to the landlord which exhibits a "Frustrated Tenancy" clause states that the tenants are not willing to pay rent for November, and requests

reimbursement for pro-rated rent from October 8, 2023 when the tenants commenced staying in an AirBnB.

Considering my finding that the tenancy did not end as a frustrated tenancy, the tenants were obligated to pay the rent and were obligated to honour the fixed term. The landlords have re-rented effective November 15, 2023 and claim half a month's rent, not to the end of the fixed term. I find that the landlords have established that claim.

The landlords also claim \$74.08 for a utility bill, and have provided a copy, with a billing date of November 3, 2023. The tenancy agreement specifies that the tenants are to pay the electric bill, and I find that the landlords have established that claim.

Since the landlords have been successful with the application the landlords are also entitled to recover the \$100.00 filing fee from the tenants.

The landlords currently hold a security deposit in the amount of \$1,350.00 and the landlord testified that the landlords received the tenants' forwarding address by text message on November 10, 2023, and did not dispute the method of the tenants providing it. The landlords filed the application on November 15, 2023, which is within the time required under the law.

Having found that the tenants are indebted to the landlords the sum of \$1,350.00 for half a month' rent and \$74.08 for an electrical bill, I order the landlords to keep the security deposit in partial satisfaction.

I grant a monetary order in favour of the landlord (CC) for the balance in the amount of \$174.08. The tenants must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,350.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$174.08.

This order is final and binding and may be enforced.

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 19, 2023

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Residential Tenancy Branch